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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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Apostles on Appeal.  
(IN TWO VOLUMES.)

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THE AMERICAN SCHOONER "HALCYON," Her Tackle, Apparel, Machinery, Boats, Furniture, Appurtenances, Cargo, and Freight Money, and J. A. T. OLSON, Master and Claimant,

Appellants,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Hawaiian Corporation, Owner of the Steamer "NIIHAU," for Itself, the Officers and Crew of Said Steamer and Other Servants of Said Owner,

Appellee.

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VOLUME II.  
(Pages 225 to 529, Inclusive.)

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Upon Appeal from the United States District Court  
for the Territory of Hawaii.

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(Testimony of F. O. Carlson.)

Q. When you dropped the schooner, did you hear any words exchanged between the master of the schooner and Captain Bruhn?

A. That was before we started to steam ahead. He said, "What you cut my line for like that"? That was all.

Q. You heard Captain Bruhn call that out?

A. That was all I heard. [183]

Q. Called that out to whom?

A. To the captain of the schooner.

Q. Did you hear any answer? A. No.

Q. Didn't hear any answer. Do you know whether the "Halcyon" went back to her original anchorage? A. After we got the schooner?

Q. Yes.

The COURT.—What are you talking about, after the line parted?

Mr. RUSSELL.—Yes. Did she go back to her original anchorage?

A. No, she stayed right there.

Q. And do you know how far that was from where her original anchorage was?

A. It's about pretty near about where she was before she broke away.

Q. I mean the "Niihau"?

A. We anchored about in the same place as before we started off.

Q. About in the same position?

A. The same position, just about; I couldn't tell exactly.

Q. You were about two hundred fathoms nearer

(Testimony of F. O. Carlson.)

in, weren't you? A. May be more, may be less.

Q. You said you stayed by. Did you stay by for the purpose of rendering further assistance to the "Halcyon" in case the "Halcyon" needed it?

A. No, we were through with the towing. The captain (witness indicates with his hands).

Q. Now, why did you say the captain did that, you didn't see that?

A. No, that's where he threw up his hands, they said.

Q. You don't know that?

A. I don't know that.

Mr. RUSSELL.—I move that be stricken out, if the Court please.

The COURT.—Motion is allowed.

Q. Now, what was the next thing that you observed about the "Halcyon"?

A. The next thing *were* when I seen her she was dragging her anchor. [184]

Q. And when was that? That was about two hours afterwards?

A. No, about seven or eight.

Q. Say about an hour afterwards?

A. About that. I should judge about an hour afterwards; may be less, may be a little more. I don't know, I didn't pay much attention to it.

Q. So that for a period of one hour she remained about where she was? Now, how was the sea at the time; that is, between six and seven in the morning as compared to the sea between three and four o'clock in the morning? Was there more or less sea

(Testimony of F. O. Carlson.)

or just about the same?

A. Oh, just about the same; the weather was very squally.

Q. And the wind was about the same?

A. And the wind was about the same.

Q. And between seven and eight you saw her begin to drag her anchor and going toward the boiler? Is that right? A. Yes.

Q. Was she making a straight line for it?

A. It seemed so. She was going right straight in there.

Q. And very gradually?

A. When I noticed it she was dragging very rapidly inside.

Q. Did the "Niihau" go in toward her?

A. Yes.

Q. And you were moving then with the "Halcyon"?

A. We were moving then with it. When we noticed her dragging her anchor we hove up and steamed in and dropped ours.

Q. And dropped yours where?

A. Dropped two anchors.

Q. Where did you drop these two anchors?

A. We dropped them over inside so we could reach her with it. She was pretty near on the beach.

Q. Then when you dropped your anchors you also put a six-inch [185] line in a boat?

A. Put a six-inch line in the boat with a four-inch line.

Q. Just as you did before?

(Testimony of F. O. Carlson.)

A. Yes. The six-inch line was in the boat, the whole length, and the four-inch line was bent on to that.

Q. You did that while the "Niihau" was anchored?

A. Yes, we put out our chain after we moved in.

Q. You moved in and you anchored both anchors?

A. Ninety fathom of chain.

Q. And you anchored while the "Halcyon" was going in toward the boiler, as you say?

A. She was dragging in very rapidly, yes.

Q. And then did you do anything with regard to helping the schooner?

A. We coiled a line in the boat and sent a boat in there immediately.

Q. Not until after the flag was hoisted?

A. Oh, yes, after the flag was hoisted. The flag was hoist long after the boat was about half way in between the "Niihau" and the "Halcyon" when the flag goes up.

Q. Now, did you see the line in the boat going to the "Halcyon" at that time, the second time?

A. Yes.

Q. Then, how did they get the hawser aboard?

A. They had a heaving line, a heaving line in the boat about thirty-five fathom of line, a very small line. They threw it to the schooner to take.

Q. They had no difficulty in doing that?

A. They had all the difficulty in the world to hold themselves on to keep from going on the beach themselves.

(Testimony of F. O. Carlson.)

Q. Did they have a line?

A. They had a hawser. That's the only thing they had.

Q. What would have been the result of this boat going on the beach? Any to the men?

A. Liable the men being drowned. [186]

Q. Life-boat on this beach?

A. Life-boat on this beach is very, very treacherous, sir.

Q. You mean to say that if this boat went on the sand beach that it would have been of serious, of some danger to these men?

A. She would never get on the beach. She would have been turned over before ever she got to the beach.

Q. Precaution was taken against that?

A. Precaution was taken by the boat holding on to the line.

Q. And that was pretty safe precaution?

A. That's the only thing they could do.

Q. Did you see the danger signal? I mean the distress signal, go up? A. I did, sir.

Q. What were you doing?

A. I was forward on the fo'c's'le-head.

Q. And you are sure that after, that when the danger signal, or rather, the distress signal went up that boat was on its way to the "Halcyon"?

A. Yes.

Q. No mistake about that?

A. There's no mistake about that.

(Testimony of F. O. Carlson.)

Q. Did you see from where you were the sand churning there?

A. I saw the sand churning up, sure, we could.

Q. And when did you first notice that? Before or after the life-boat started with the line?

A. After the life-boat.

Q. After that? A. Yes, after that.

Q. Was she churning sand there at the time they hoisted their distress signal? A. Oh, yes.

Q. She was?

A. She was on the beach then.

Q. You say she was on the beach?

A. I wouldn't say so, no. When she set the distress signals she was in a dangerous position.

Q. Was she on the beach, would you say?

A. I couldn't say whether she was on the beach or not. [187]

Q. And you could see from the, from your position that she was churning sand?

A. I could see the sand there all churning with the boat with the heavy breakers.

Q. Where the heavy breakers were?

A. The heavy breakers going up on the beach and the sand was churning up there and rolling rather heavily.

Q. Where was the life-boat when you first saw the churning of the sand?

A. I don't know. When we sent the life-boat in there were no sand churned up there at all.

Q. And by the time the life-boat got to the vessel there was sand?



(Testimony of F. O. Carlson.)

A. Sand churned up all around her, yes.

Q. When the life-boat got to the vessel was the vessel still going in towards shore?

A. She was dragging her anchor all the time.

Q. Doesn't the very fact that she was still dragging her anchors show that she was not on the beach?

A. She was not dragging her anchor when the life-boat got there.

Q. Didn't you say when the life-boat got there she was still dragging her anchor?

A. That's when they *start* from the steamer "Niihau."

Q. You said when the life-boat got to the "Halcyon" the "Halcyon" was still dragging her anchors all the time?

A. I couldn't say that because I couldn't see whether she did or not; I couldn't see it.

Q. Now, after you got the six-inch line aboard, I mean aboard the "Halcyon" you tightened up on that then you sent over a seven-inch line?

A. We hove the six-inch line taut.

Q. What's that?

A. We hove the six-inch line taut; hove it well taut, keep the schooner right there.

Q. Did you say you towed her with just the six-inch line? A. Not the second time.

Q. You didn't tow it?

A. No, put a seven-inch on. [188]

Q. When you put a seven-inch line on her, were you watching the line?

A. I wasn't watching the line, I was forward; the

(Testimony of F. O. Carlson.)

lines were made fast aft.

Q. When they started towing her out did you watch the lines?

A. I didn't see the lines then. I was on the fo'c's'le-head. I was watching the steamer, watching the buoys to see she wasn't going to get foul of anything.

Q. Do you remember when you did start towing that she towed right out?

A. No, we had quite a job to get started.

Q. I see. You had a job to get her started. And do you know why that was?

A. Well, I presume she was on the beach; she was aground.

Q. Why did you say now in your opinion she was on the beach?

A. The time we started to tow her she must have been aground because we had an awful hard time to start her; we hove in our chain and the engine going in full speed ahead at the same time. All we could do was stand still there. When a heavy sea came then we gained a little then stopped again then moved again when the next sea come along; so I presume she was on the beach by the way she was acting.

Q. So you say as of your own knowledge, as a fact, that you had a very difficult time to start the tow, and such a difficult time as leads you to the conclusion that she was on the beach, is that right?

A. Yes.



(Testimony of F. O. Carlson.)

Q. How long were they towing before she commenced to ease up?

A. I couldn't say; I didn't notice the time, sir.

Q. If she were on the beach, or at least you though she were on the beach and you were trying to tow her off the beach, weren't you interested enough to notice?

A. My interest was on the fo'c's'le-head to look out for my anchors and chain.

Q. Well, but you commenced to heave then just as soon as you [189] were ready to start?

A. Well, we heaved in the chain after we got the line fast; we heaved in the chain; was just standing like that; couldn't heave no more on the windlass; the chain wouldn't come in.

Q. Your anchor chains wouldn't come in?

A. The anchor chains wouldn't come in and we were going full speed ahead on the engine.

Q. You went full speed ahead on the engine?

A. We went full speed ahead on the engine and hove on the chain at the same time.

Q. That was your particular work?

A. That was my work at the time.

Q. Well, then, if you were paying so much attention to that, why is it you don't know how long it took before she began to ease up on her tow?

A. I had no watch with me and it was raining and blowing.

Q. You were pretty sure you had your opinion that she was on the beach?

(Testimony of F. O. Carlson.)

A. The way she was going I was pretty sure she was ashore.

Q. If you were tending to your own duty as you had to do and you were watching for your chains and you noticed your chains were taut, why is it that you didn't notice how long it was before they eased up?

A. I couldn't tell you that. When the swell goes in the schooner raises up; we might have got this up on the chain then she stop again.

Q. Even when you were towing out, when you got into the harbor, she was irregular, wasn't she, in her tow? A. No, she was afoul then.

Q. She was afoul then. It is your opinion, then, absolutely, that she was on the beach?

A. On the beach, yes.

Q. Do you know how much water the "Halcyon" took?

A. About twelve or fourteen feet, I should judge; may be more. [190]

Q. How much water does the "Niihau" take?

A. Her load water line is thirteen feet, sir.

Q. She doesn't take any more than thirteen feet?

A. Maybe sometimes when you load her down, but the United States inspector allows her no more than thirteen feet; that's the load line.

Mr. RUSSELL.—I move, if the Court please, that the position the witness indicated here as where the "Halcyon" was at the time that the first line was given her, be stricken, be erased on the ground that it appears that it isn't based on his own knowledge.

(Testimony of F. O. Carlson.)

Mr. WARREN.—To that I will say that the witness didn't make any mark. That is H-2 and H-3 and no H-1.

Mr. RUSSELL.—That's right; I'll withdraw that.

Q. Now, your mark H-2 there is, in your judgment, correct; that is, that's your best judgment, is it? A. As near as I know.

Q. Are you familiar with the harbor there; that is with the lines there?

A. Pretty fairly; fairly good.

Q. Do you know the depth of the water there; along in through there.

Mr. WARREN.—Where?

Mr. RUSSELL.—That is, along the shores of the harbor.

A. I know pretty near it, yes.

Q. And do you know—do you know what that first line indicates?

Mr. WARREN.—Indicating what?

Mr. RUSSELL.—Indicating the first line off the shore.

A. That's the shore; I'm not familiar with the shore-line, sir.

Q. Do you know what that line is? Indicating the first line. [191]

A. That's the shore-line, is it, or railroad track, or what is it?

Q. Well, if you don't know—

A. I don't know anything about the railroad track.

Q. Captain, if you don't know whether that is the

(Testimony of F. O. Carlson.)

shore-line or the railroad track, how did you come to mark that?

Mr. WARREN.—I object; the witness hasn't said that.

The COURT.—Point out the shore-line on that map.

(The witness indicates with eraser end of pencil.)

Q. Just indicate with that pencil what you marked as the shore-line.

Mr. WARREN.—Let him do it with blue pencil.

(The witness indicates with blue pencil.)

Q. Do you know what this line is?

Mr. WARREN.—Indicating the line next seaward of the dotted blue line?

Mr. RUSSELL.—Yes.

A. That's the beach.

Q. Do you know what that line is?

A. That is the sea line; two feet of water indicated right here.

Q. Now, you have marked the position H-2 of the "Halcyon" as being inward and toward the shore of that line.

Mr. WARREN.—What line?

Mr. RUSSELL.—Why, the line just referred to.

A. The "Halcyon" is here.

Q. Here is the line, here is the shore-line?

A. Yes, sir, the beach.

Q. Now, Captain, at all points inside of this line—

Mr. WARREN.—"This line" meaning what?

The COURT.—Dotted blue line.

(Testimony of F. O. Carlson.)

Mr. RUSSELL.—The sea is not more than three or four feet?

A. Two feet. It's marked on here.

Q. And here it's marked four?

A. Six and a half.

Q. That's outside of this line? [192]

A. The schooner is outside the line.

Q. You've marked the schooner in blue pencil inside of the line.

A. That's the mast standing up to indicate it is a schooner.

Q. You have her outside of that. Now, Captain, you notice here a depth of six and a half and here the depth is eight feet? A. Yes.

Q. And she was up in that depth of water?

A. I couldn't say because I did not sound it, sir.

Q. Do you know how much she drew?

A. Twelve or fourteen; between twelve and fourteen feet, I presume when she's loaded; and she had little lumber off her.

Q. She was loaded, wasn't she?

A. She was loaded; she only had taken off very little cargo; very little of her deck load.

Q. And you still say, drawing between twelve and fourteen feet of water she may have been at six or eight feet of water, is that right?

A. She may have been in there, yes.

Q. No, you think it possible in your opinion that she was, that this schooner drawing say from twelve to fourteen feet of water, that when you saw her as the tow-line was being given her, that she was only

(Testimony of F. O. Carlson.)

in about from six to eight feet of water?

A. My candid opinion about it she was aground; she was acting like a vessel would be aground; she was just rolling.

Q. She was way out of the water?

A. When she went over, yes. When she went over to the side you could see pretty near down to the keel; it looked to me, or seemed she was simply on the edge of that sand-bar there and she was rolling.

Q. And you could see her keel?

A. I wouldn't say I could see her keel, but I could see half-way to her bottom.

Q. But you don't know how long it took to take her off? A. I couldn't tell. [193]

Q. It might have been five minutes and it might have been an hour? A. It may be.

Q. Eh?

A. I wouldn't answer that question, Mr. Russell, if I may be excused because I didn't notice it. I know I was very busy forward.

Q. Did you see Captain Mosher go aboard the "Halcyon"? A. No.

Q. Do you know whether or not Captain Mosher got any soundings on the "Halcyon"?

A. I couldn't say; I couldn't say, sir.

Q. Now, she wasn't so near, she wasn't so near to the shore but what there were five or six breakers between her and the shore? A. About that, yes.

Q. Five or six breakers? A. Yes.

Mr. RUSSELL.—That's all.



(Testimony of F. O. Carlson.)

Redirect Examination.

Mr. WARREN.—Q. Were there any lines at any of these operations that belonged to the schooner?

A. It's all steamer lines.

Q. When was it that you heard Captain Bruhn ask Captain Olson what he cut the line for? Was that the first or second tow?

A. When the pilot come alongside, the harbor-master and Captain Olson come alongside, he says, "What you cut my line for?"

The COURT.—That was the first time?

A. That was the first time. The first time, yes, you Honor.

Mr. WARREN.—Was that after the first tow was over or after the second tow?

A. Oh, that was after we were all through the second time.

The COURT.—When the captain of the "Niihau" said to the captain of the schooner, "What did you cut my lines for," when was that?

A. That was, I couldn't say, your Honor, whether it was the [194] first or second time. I don't know.

Q. Let me ask you who else was present at that time?

A. I was on the fo'c's'le-head; the second mate was aft.

Q. Was anybody with Captain Olson?

A. I don't remember.

Q. Where was Captain Olson?

A. Captain Olson, I couldn't say whether it was

(Testimony of F. O. Carlson.)

the first time or the second time when Captain Bruhn told him, "What did you cut my line for?"

Q. Was the conversation carried on any distance between them?

A. I couldn't say; I've forgotten that, Mr. Warren.

Q. The line parted at the first attempt, didn't it, when you first towed her off; that's the time the line parted? A. Yes.

The COURT.—It seems logical he must have said it at the time the line parted and not an hour afterwards.

Mr. WARREN.—That is just exactly what I wish to clear up.

A. It must have been the first time that the captain hollered to him, "What did you cut my line for?"

Q. At that time do you know whether Captain Olson was aboard the "Halcyon" or alongside the "Niihau"?

A. I heard the conversation after he got alongside.

Q. When was that, after the first or second tow?

A. That was after the second tow.

Q. Do you think there might have been two occasions, the second time the captain calling, "What did you cut my line for," you heard no answer?

A. It was blowing too hard when the boat came alongside.

Q. Did you hear?

A. I think Captain Bruhn said, "What did you cut my line for, Captain?"



(Testimony of F. O. Carlson.)

Q. Did you hear the answer that time?

A. He said, "I didn't cut them." [195]

The COURT.—When the "Haleyon" was at H-2 and you started to send a line to her, what was holding her then from going ashore?

A. I think, your Honor, she was ashore; the sand beach held her.

Q. She had no anchor out?

A. She had one anchor out, yes.

Q. That was helping her to keep off?

A. I presume so; that's what the anchor is down for.

Q. Now, as you've drawn here on the map that's about the way she was pointing?

A. As near as I can think.

Q. And she was pointing into the north?

A. She was broadside to the sea; she was heading here on the side.

Q. And the wind was striking her on the starboard side?

A. Starboard side; wind and sea.

Q. Which direction was her anchor chain?

A. Her anchor chain was standing right straight out.

Q. That's the reason she pointed that way, perhaps?

A. The current down there make a vessel lie that way.

Q. When you saw she was drifting the second time, how did you go in, stern first or bow first?

A. We went in bow first, then we dropped our anchor and swung, the steamer swung around.

(Testimony of F. O. Carlson.)

Q. When you let go your anchor?

A. We let go the other anchor and the wind was taking her right in slow, very slowly.

Q. You did the same way at the first time?

A. Yes.

Mr. WARREN.—When the "Halcyon" was in this position, as you say, H-2, and her bow pointing approximately toward Hilo Sugar Co. mill, was her anchor-chain in line with the vessel or at a different angle?

A. It was on a different angle; she was lying this way and her anchor chain about this way.

Q. Her anchor chain was pointing toward what place, then?

A. Pointing towards, to the northward; out.

Q. Approximately how many points difference between the direction [196] of her anchor chain and her bow at that time. Will you please mark with this blue pencil the direction of her anchor chain from her bow? A. From the "Halcyon's" bow?

Q. From the "Halcyon's" bow at that time.

(The witness marks.)

The COURT.—Nearly at right angles.

Mr. WARREN.—That's all.

Recess.

### **Testimony of Moki for Libellant.**

Direct examination of MOKI, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Moki, you know Manuel the boat man at Waiakea landing? A. Yes.

(Testimony of Moki.)

Q. And were you with him on the morning that he went out with a launch to where the schooner "Halcyon" was at the time of that storm?

A. The first thing in the morning I went to the boat-house and got on the boat with Manuel.

Q. Speak a little louder.

A. The first thing in that morning, the time I went to the boat-house I got on the boat with Manuel. The boat-house man say I went out with him on that morning.

Q. And where did you go?

A. I go till the schooner.

Q. And did you get there before her line broke or after that line broke; that tow-line?

A. We be there first, the same time. As soon as we alongside the schooner that's the time the tow-line broke from the "Niihau."

Q. Did you see how that line broke or what made it break? Could you tell that?

A. Too much heavy while "Niihau" towing.

Q. Then when the line broke what did the schooner do? A. Well, he dropped his anchor.

Q. What did Manuel do after the schooner dropped anchor?

A. Manuel called to the captain suppose to got any line run and fasten to the buoy. [197]

Q. Did you hear Manuel ask the captain that?

A. Yes.

Q. And what did the captain answer back?

A. The captain said, "That's all right"; he don't

(Testimony of Moki.)

like any line there fastened to the buoy.

Q. That's all he said, "That's all right"? Captain say anything else?

The captain told Manuel that was the line was broken there in the night; told Manuel try to take him off the line from the buoy.

Q. The line on the buoy that had broken the night before? A. Yes.

Q. And what did Manuel do?

A. So Manuel said, "Yes." He went to the buoy and we try to take that line off from the buoy; we couldn't do it because it's too tangled up so we went back again alongside the schooner and Manuel called him again for a second time. "We can't get him out, you see it's all tangled." So Manuel called the captain again suppose he got any line fasten the buoy again; that was the second time; that's all I know.

Q. What did the captain say that time?

A. He said, "That's all right."

Q. What kind of weather was it that day when you were out there? How was the wind?

A. Oh, blowing high.

Q. And the sea? A. Yes.

Q. What direction that wind come from?

A. This Hamakua side.

Q. Then when the captain said the second time he didn't want any rope what did Manuel do?

A. That's all.

Q. Went back? A. Yes.

Q. You didn't go out with Manuel the second time?

A. No.

(Testimony of Moki.)

Mr. WARREN.—Cross-examine. [198]

Cross-examination.

Mr. RUSSELL.—Q. Did you take the line out to the “Halcyon”? A. Which line you mean?

Q. That night, did you take the line out to the “Halcyon”? That morning, did you take the line out to the “Halcyon”? A. What line you mean?

Q. Well, the line that was broken, that was parted; that line that they towed with.

A. The line is broken was in the night, you mean?

Q. Yes.

A. That was the line the captain told Manuel for us to try and take him off from the buoy, but we couldn't do it; it's all tangled.

Q. I didn't quite understand you on direct examination. You were a member of the crew of the “Niihau”? A. No, I'm a shoreman.

Q. And what line was it that you spoke of as having parted? What line was it that you said it was parted?

A. That was the first line; it was the tow-line the time we got there alongside the schooner; that's when the first line I seen it is broken.

Q. Was it daylight or dark?

A. Was in the morning.

Q. That wasn't the line that went from the “Halcyon” to the “Niihau,” was it?

A. That was the line from the “Halcyon” running to the “Niihau” was towing with; that was the line broke.

(Testimony of Moki.)

Q. Oh, that was the line that was broken?

A. Yes.

Q. Was that the line that broke while you were out there?

A. That was the tow-line from the "Niihau."

Q. Did you see it break?

A. We saw it that time it broke. [199]

Q. Did you see it break?

The COURT.—He wants to know did you see it break? (The Court puts the question in Hawaiian.)

The COURT.—He says he saw it break.

Q. Was it out of the water when it broke?

A. Yes, that was the tow-line "Niihau" was pulling it broke.

Q. And was it under the water when it broke or up on the water?

A. It was up on the water; it was towing; the rope was gone down this way.

Q. It was sagging? A. Yes.

Q. And it broke at a point that was out of the water? A. No, half.

Q. Where it broke that was in the air; it wasn't in the water; the place where it broke that was outside the water. A. Was outside the schooner.

(The Court speaks Hawaiian to the witness.)

The COURT.—I understand him to say it was on top of the water.

Q. And where were you at that time? In a boat out near the schooner; near the "Halcyon"?

A. Yes, near the schooner.



(Testimony of Moki.)

Q. And what were you doing out there?

A. What?

Q. What were you doing out there?

A. Oh, I go take a ride with Manuel on the boat.

Q. Just to see what was going on? A. Yes.

Q. You weren't out there for any particular purpose? A. No.

Q. Then when the line broke you asked the captain if you take a line to the buoy?

A. No, not me, Manuel.

Q. What did he say to the captain?

A. He told the captain, suppose he need any line to tie from this schooner; suppose he has any line to run and fasten to the [200] buoy.

Q. Did you see him drop his anchors?

A. Yes, I see him drop his anchors.

Q. How many anchors did you see, one or two?

A. I see one the time he drop, that's all.

Q. Did you see any line being taken to the buoy at all? A. No.

Q. What lines are you referring to that were all tangled up?

A. I guess that was the line he was fastened. I don't know what they call; it's the breast-line; line holding out from the wharf; that was night-time.

Q. Going to the buoy?

A. Yes, to the buoy; that was the line, I think.

Q. What did you go out there for?

A. I take out there to ride with Manuel.

(Testimony of Moki.)

Q. You say that you tried to untangle those lines at the buoy?

A. Yes, that was the first rope; loosen rope from the schooner. The captain told Manuel to go and bring that.

Q. To try and take that line off?

A. Yes, take that line off.

Q. And you went over there and you and Manuel saw the line all tangled up?

A. Yes, we try to open and we couldn't do it.

Q. And had you seen the schooner the day before or the evening before as she was moored there to the wharf

A. No.

Q. Well, you saw the schooner the day before?

A. Well, I seen the schooner; I seen from the boat-house; I didn't go alongside there to look.

Q. And then you saw after Manuel and you went over to untangle the rope you came back and Manuel again asked him if he wanted to take another line over? [201]

A. At first Manuel asked the captain that line was all tangled up; we couldn't open. Then Manuel told again for the second time suppose he has any line to run fasten to the buoy while the boat is there so Manuel could help, you see?

Q. Don't you remember the first time that Manuel asked if he could take a line over to the buoy the captain said he didn't have any more line; that he let out the line to the buoy and asked him to get that line and bring that to him? Do you remember that?



(Testimony of Moki.)

A. Oh, Manuel. The captain, the time Manuel asked for a line run fasten to the buoy, he didn't say, "No, he hasn't got any more line." He said, "that's all right"; that's all what he say.

Q. Why did Manuel go over to the buoy to get that other line? A. Which line you mean?

Q. The line to the buoy? A. This tangled line?

Q. The line that was tangled?

A. The captain sent him.

Q. The captain sent him to get that line at the time he asked the captain if he wanted a line to go to the buoy, is that right? Listen, Moki. Do you remember this, Manuel asked captain if he wants a line to go over to buoy, so the captain tell him to go over to buoy, he find line there; he bring that to him; so Manuel went over there to try and get the line; line all tangled up and he came to captain and told captain line all tangled up and can't get it; then captain says, "All right, I'm all right now." Is that the way it was?

A. Oh, what I heard the first time Manuel got over there while this tow-line from the "Niihau" broken that time so he drop his anchor. Manuel ask him; this was the first time. Manuel asked the captain suppose he has any line to run and fasten to the buoy; well, the captain said he is all right so he asked Manuel to go and get this rope that was broken in the night. I [202] don't know. He told Manuel to go and get that line what they lost.

Q. From the buoy?

(Testimony of Moki.)

A. Yes, from the buoy there. We went over there and try to open; it's all tangled up; we couldn't open so we came right alongside the schooner again; so Manuel asked him again.

Q. When captain told him to go over to buoy to get that line, did the captain say, tell Manuel what do with line?

A. That time Manuel went right alongside the schooner and told the captain that line is all tangled up, can't open.

Q. Before that, at time when captain told Manuel to go and get the line, what he say to Manuel about what to do with line after he get it?

A. I didn't hear him say to do anything.

Q. Is Manuel here? A. Yes.

Mr. RUSSELL.—That's all.

**Testimony of Manuel Lacerdo, for Libellant.**

Direct examination of MANUEL LACERDO, a witness on behalf of Libellant, called and sworn.

Mr. WARREN.—Q. Did you go out with your launch to the schooner "Halcyon" on the morning that the "Niihau" was towing her out?

A. Yes, sir.

Q. What time did you get out there? Before or after that tow-line broke?

A. Well, I started about seven o'clock.

The COURT.—That is, the line from the "Niihau"?

A. The line that the "Niihau" had hooked on the "Halcyon."

(Testimony of Manuel Lacerdo.)

Q. I don't mean so much by the clock.

A. When I got out to the schooner it was somewhere around six or seven o'clock; of course, the steamer towed her and the line parted somewhere about seven o'clock. [203]

Q. Just where were you when that line parted?

A. I was, say I was somewhere close to that buoy; we were leaving the river going out on this side of the railroad wharf.

Q. The outer buoy?

A. The first buoy going out. The first buoy going out the river.

Q. Close to the end of the wharf? A. Yes.

Q. And how near were you to that when the line broke?

A. When the line parted I was close to the ship on the starboard side.

Q. Now, did you see the line break? A. Yes.

Q. Did you see anything that in your judgment caused it to break? A. Yes.

Q. Do you know what made the line break?

A. Yes.

Q. What was it?

A. She chaffed on the buoy; as the steamer was towing she was duffed underneath the buoy.

Q. What's the shape of these buoys?

A. They're got four pieces nailed to each other; that's about twelve by twelve; that's about twenty-four by twenty-four; the size of the buoy.

Q. Is it round or square? A. Square.

Q. Sharp corners on it?

(Testimony of Manuel Lacerdo.)

A. No, it's got big iron bands around it.

Q. Underneath that band what's the shape?

A. Squaring off the way down.

Q. What did the schooner do?

A. Well, the schooner she went up against the buoy when that line parted and she drifted a little ways to the Hilo side; say ten or fifteen feet away from the buoy and she dropped her anchor [204] there.

Q. What did you do?

A. I went to the captain and asked the captain if he wants any help; if he wants me to run any line. He says he was all right he didn't need any; he says the anchor would hold.

Q. Anything else?

A. He sent me off to the first buoy going out the river to go and get his stern-line that he parted the night before that, the night before that morning.

Q. I want you right here to tell us just as nearly as you can remember what he said?

A. He told me to go and get the line and bring it to the ship; it was only a small piece of line.

Q. Small piece?

A. It wasn't a very big line because she was parted from the ship.

Q. Do you know whether that line would have been or was long enough to reach from the buoy to the schooner?

A. The way she was?

Q. Yes.      A. No.

Q. Did you afterwards find out?

A. Well, sir, I can tell when she went from the wharf I was the one ran all them lines. That line

(Testimony of Manuel Lacerdo.)

wouldn't reach where she was anchored after she parted.

Q. Then what did you do?

A. I went over to the buoy with three men on my boat and we tried to get the line out, but the line was all tangled so half way down to the chain. I went back and told the captain I couldn't get the line out. He said, "All right, let it stay there." I looked, of course, when I was alongside the buoy; the ship was drifting a little ways. The ship was drifting inch by inch. I could tell because when you're lying alongside the buoy you ain't drifting. I could see that she was drifting. I told the captain, "You're drifting." He says, "No I ain't drifting." I says, "Captain, you'd better give me a line or you'll go ashore." He said, "That's all right if I do go ashore. That's all right," he says, "My anchor will hold me." [205] I says he'd go ashore; the captain said he was all right. I said, "Captain you'll go ashore." "That's all right, if I go ashore." he says.

Q. Then what did you do?

A. I went over to the boat-house and looked back. She was going back all the time; drifting backwards.

Q. What kind of weather and sea?

A. It was pretty nasty winds blowing; couldn't blow any stronger; the strongest wind we have ever had in Hilo here; going about twenty-five miles an hour.

(Testimony of Manuel Lacerdo.)

Q. When you get back what next did you have to do with that schooner?

A. When I got back to the boat landing, here comes Captain Mosher. In the morning I was looking for Captain Mosher, the pilot because I saw her close to the piles and I was afraid she was going ashore; she was right in straight line with the double reef that faces over there. There is no more than twelve or thirteen feet of water.

Q. How close is that to the mouth of the Waiakea River?

A. It couldn't be any more than two hundred feet from the end of the piles.

Q. You couldn't find the pilot so what did you do?

A. I couldn't find the pilot; rang down to his house and all around; I couldn't get him. Just then I went out.

Q. That is the time you've been telling us about?

A. Yes.

Q. After you got back then what did you do?

A. After I got back Captain Mosher told me to take him out—

Mr. RUSSELL.—Never mind. I object to what Captain Mosher said.

The COURT.—Sustain the objection.

Q. Now what did you do? A. I went out.

Q. At about that time had you been watching the schooner? A. Yes.

Q. Did you see any flags go up, distress signals?

A. No. Well, he had the flag up just before we got there with [206] the pilot on the boat.



(Testimony of Manuel Lacerdo.)

Q. That's the first time you noticed it?

A. That's the first time I noticed the flag. It wasn't there when I left.

Q. When you started out with the pilot how long did it take you to get over there?

A. It didn't take me any more than five or six minutes; not more than five minutes.

Q. How far from the mouth of the Waiakea River was she then? A. Pretty hard for me to tell you.

Q. Well, the best of your judgment?

A. I don't know; that's pretty hard; well, say about three thousand feet anyway from the end of the piles.

Q. Over toward what direction?

A. Towards Hilo.

Q. Now, would you look at this map, Libellee's Exhibit 1, over here? Can you look at this map, Libellee's Exhibit 1, of Hilo harbor, locate approximately where she was in the harbor at the time her flags went up?

A. Well, when her flags went up that's just when she went astrand on the beach.

Q. How far was that from that old black boiler on the beach.

A. Well, it's about two hundred feet; two hundred feet from the Waiakea side; not straight out.

Q. A little Waiakea side of the boiler?

A. Yes.

Q. Then when you got over there what happened?

A. When I got there I wanted to go on the port side of the ship and Mosher told me to go on the star-

(Testimony of Manuel Lacerdo.)

board side; and just when I got there, of course, a little ways, about fifty feet away from the ship and a big swell came over the bow of the boat and water came in and got in my engine; I couldn't go ahead. I dropped anchor. My chain was twelve feet. I was just then on the breakers. I was going back little by little. Captain Mosher [207] was walking back and forward. I suppose he was thinking we would go ashore. I got my anchor up. I went around the stern and got on the port side and put Captain Mosher aboard; just then she was listing, turning over to the Hilo side, somewheres; heading toward Wainaku Mill; just about that direction, her anchor straight out.

Q. Her anchor chain in what direction?

A. Say right straight out the ship's bow swinging this way.

Q. You mean right angles?

A. Yes, right angles.

Q. You said you had eight or ten feet of chain?

The COURT.—Twelve feet?

A. I had somewheres around *then* or twelve feet of chain.

Q. Could you determine the depth of the water there where you anchored?

A. Well, it couldn't be any more than eight feet; between eight and nine feet.

Q. And where you were anchored, was that nearer the shore than the stern of the ship or further out than the stern?

A. Way in toward the stern of the ship. We were



(Testimony of Manuel Lacerdo.)

fifty or sixty feet away from the ship, from the stern of the ship inland.

Q. Now, are you acquainted with the depth of the water around that place?     A. Yes.

Q. And little further out?     A. Yes.

Q. Can you tell us what the depth of the water was at the place where the stern of the schooner was?

A. Well, I can tell you all right because sometimes it gets deeper; sometimes gets shallower, at that time she didn't had any more than about well, say ten or twelve feet of water; between nine up to twelve feet of water.

Q. Under her stern there?

A. Under her stern there, yes.

Q. Well, how could you tell that her stern was ashore?

A. Well, I could tell from the swells; the swells come up, she wouldn't raise at all; and when the swells goes down she was dry; [208] that is. you could see by the water line where the swells come over leaves a wet line on the ship.

Q. How much of her bottom could you see.

A. Well, I couldn't see any more than about a foot and six inches; somewheres around up to two feet.

Q. You mean below her water line?     A. Yes.

Q. How did the ship act?

A. Her bow would go up and down; the stern wouldn't. You know just how a thing is when it's grounded.

Q. Were there any breakers around there?

A. Yes, breakers at her stern.

(Testimony of Manuel Lacerdo.)

Q. And how high was the sea and the swells around the boat herself? A. Around my boat.

Q. No, around the schooner?

A. Around the schooner? Well, the swells would go up to about on the stern, would go up to about four or five feet swells.

Q. How did you judge the height of a swell?

A. The swell I could tell by the ship.

Q. In your judgment, was the schooner in any danger at that time? A. Well, sure; why, yes.

Mr. RUSSELL.—That is objected to, if the Court please; it is calling for the conclusion of the witness.

Mr. WARREN.—Withdraw it for a moment.

Q. How long have you been operating a launch in Hilo? A. Well, about eight years.

Q. Right in Hilo Bay?

A. In Hilo Bay; nowheres else.

Q. Do you know the vicinity pretty well?

A. Oh, yes.

Q. Your business is to work around in the harbor with your launch?

A. Yes, running lines, towing, and so on.

Q. Why would you say she was in danger? [209]

Mr. RUSSELL.—That is objected to as calling for the conclusion of the witness, not a matter subject of expert testimony of the witness; that's an issue that would be for the Court to determine from the other circumstances in the case.

The COURT.—Have you done any wrecking?

A. Yes, I was wrecked there once; I was there when the "Kilauea Hou" went onshore.

(Testimony of Manuel Lacerdo.)

Q. Did you have anything to do with the "Kilauea Hou"?

The COURT.—I will sustain the objection.

Mr. WARREN.—Q. Could you see whether or not the wind had any effect on the ship?

A. Why, of course, the wind had effect on the ship; it was swinging her bow toward the shore after she was grounded.

Q. Could you see whether the sea, waves, had any effect?

A. Yes, the sea was dashing up against the bow on the starboard side.

Q. Did the sea strike her port side at all after her stern struck? A. No.

Q. Then the sea struck her on—

A. On the starboard side.

Q. Starboard side. When you got out there and about the time that your launch got disabled for a little while, where was the "Niihau"?

A. Well, the "Niihau" was outside anchored and he had a line on the ship; that is, they were going over with a line to the ship.

Q. With a small boat?

A. On a rowboat; steamer boat. They were bringing their hawser to the ship. After I got Captain Mosher on board on the port side and the "Niihau" had a line fast on the ship, she commenced to working the ship out.

Q. Tell us just how she worked the ship.

A. The "Niihau" had her anchor out, you know, and he was steaming ahead and towing, steaming

(Testimony of Manuel Lacerdo.)

ahead and heaving up on the [210] anchor and he brought her bow straight out and after a while she went out; was clear of the beach.

Q. Now, how did the schooner move as she came around in that way?

A. The schooner swung her bow straight out towards the steamer and stayed there quite a while, and afterwards she worked her way out slowly.

Q. How do you mean, slowly?

A. As the ship was towing I suppose the swell helped a little bit.

Q. Did she come steadily or in jerks?

A. Kind of jerking like; she'd go and stop, go and stop.

Q. Did that going and stopping, was that in anyway connected with the times that the sea would strike her, the swells would come?

A. No, just then the waves wouldn't bother her, the swells were rising just about amidships of the ship.

Q. After she got around?

A. After she got around.

Q. In your judgment, was your launch in any danger and were you in any danger?

A. Yes, I was taking in lots of water. I had my engine going all the time pumping water out.

Q. What did you do about the water and the tossing of your boat?

A. I was outside waiting for Captain Mosher and looking at them.

Q. While Captain Mosher was on board, while you

(Testimony of Manuel Lacerdo.)

were fixing your steering gear?

A. Captain Mosher was on board while I was fixing my reversing gear.

Q. During that time how did the boat act?

A. The boat was going up and down and the swell was dashing all over the house. I was down getting all the water on my back.

Q. What did Captain Mosher do, if anything?

A. He was walking back and forth. He was worrying his head off. I suppose he thought the boat would swamp. We were drifting ashore a little bit. [211]

Q. Prior to that signal going up on the "Halcyon," when you have told us, was there any signal displayed from the schooner of any kind?

A. When I what?

Q. Before you saw that signal up as you were going over, had you seen any singnals from the ship at all before that, for help?

A. When I seen the signal was when we were going around the piles when I had Captain Mosher.

Q. Before that you saw none?

A. She never put anything up until she was grounded.

Q. Did you watch her pretty much of the time?

A. I was up on the roof of the boat-house watching her.

Q. In your judgment, how far was the schooner from the shore?

A. From shore where she was grounded?

Q. Yes, from the shore-line?

(Testimony of Manuel Lacerdo.)

A. Well, say about little over two hundred feet.

Q. How much?

A. About a little over two hundred feet.

Q. And you say you were fifty feet or so closer in?

A. Yes, closer in shore.

Mr. WARREN.—Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. When you first appeared there that morning, what did you see, the first thing that you saw that morning?

A. In the morning when I went out?

Q. Yes.

A. What I seen was the "Niihau" pulling her out; had a line on.

Q. Was she proceeding out? A. Yes.

The COURT.—Q. She went along on a straight course alongside of the railroad wharf?

A. Well, quite a ways towards the Hilo side.

Q. Say about two or three hundred feet from the railroad wharf? As must as that? [212]

A. More than that.

Q. And it was daylight?

A. That was between six and seven o'clock in the morning.

Q. And it was daylight? A. Daylight, yes.

Q. Are there any lights on that buoy at night?

A. No lights on the buoy.

Q. And did you see the "Niihau" pass that buoy?

A. The "Niihau" passed in between that buoy and the railroad wharf.

Q. Then it was going out in the direction away



(Testimony of Manuel Lacerdo.)

from the railroad wharf, wasn't it? A. Yes.

Q. The "Niihau" took a course out permitting the buoy to pass in between the schooner and the "Niihau"?

Mr. WARREN.—Object to that as calling for the conclusion of the witness.

The COURT.—Overrule the objection.

A. No, that wasn't the idea. The idea was the captain of the schooner didn't steer in line with the steamer.

Q. He didn't follow?

A. He didn't follow the steamer.

Q. The steamer, the schooner was not in line with the steamer, is that right?

A. Yes. It wasn't in line.

Q. And you mean then that the schooner was going one way—

A. And the steamer going another way.

Q. The steamer going one way and the schooner the other? A. Yes.

Q. You are position about that? A. Yes.

Q. And how long did it take from the time that the line got underneath the buoy until it parted.

A. Oh, well, it didn't take any more than about ten minutes that the line was parted.

Q. But did it take ten minutes?

A. Oh, about that; just about that. [213]

Q. And the steamer didn't make any effort to change its course, did it?

A. No, she went right ahead and dropped her anchor and there she stayed.

(Testimony of Manuel Lacerdo.)

Q. No, the steamer?      A. The steamer, yes.

Q. What did the steamer do when the line got caught underneath the buoy? Kept going right along?

A. I suppose they kept going because they had such a long line that the line was under the water.

Q. For ten minutes that line was under the buoy?

A. It was coming along slowly under the buoy.

Q. Did you see that line afterwards?

A. I seen the line, yes.

Q. Did you see any marks on that line showing that for ten minutes she had been dragging under some object?

A. It was only a little ways where she was broken off; it was only a little bit; that's a short piece.

Q. As a matter of fact that line didn't show any break or tear except at the point where it had parted, isn't that so?      A. Yes.

Q. If that line broke as the result of being chaffed against the buoy how deep underneath the water would that line be?

A. Well, say about four feet any way.

Q. During that tow, wasn't that line taut?

A. Well, the line was taut all right, but according to the swells and the sea that we had once in a while it would go slack.

Q. And the swell and the seas were in toward Waiakea River, weren't they?

A. Well, the swell seemed was running right in straight; that is, more towards the double wharf than anywhere else.

(Testimony of Manuel Lacerdo.)

Q. And do you mean—How would that slacken up, by the steamer?

A. No, it's by the ship.

Q. What's that?      A. By the ship. [214]

Q. By the ship?

A. By the ship as she goes up and down on a swell.

Q. And just its movement up and down?

A. Yes.

Q. She was heavily laden, wasn't she?

A. What is it, sir?

Q. She had a load of lumber on?

A. No, she was about half discharged.

Q. She wasn't half discharged, was she?

A. She was about half.

Q. Don't you know she had taken about fifty thousand feet off?

A. I mean on deck; she had only about half a deckload.

Q. Half a deckload?

A. Yes. I don't mean what she had in the hold.

Q. You'd call her fairly loaded, wouldn't you, as she was?      A. Well, that—

Q. You don't know, do you?

A. No, I don't know if she was loaded or not.

Q. Now, when you went over to ask the captain if he wanted a line taken to the buoy, did he say anything about not having any line?

A. Yes, he told me he was all right.

Q. Did he say anything about his not having any line on board?      A. No.

Q. When he asked you to go over there and get

(Testimony of Manuel Lacerdo.)

that line, do you recall whether it was for the purpose of having a line? Did he say anything about that? A. No.

Q. And then afterwards when you told him that he was going ashore what did he say; said he didn't care as to whether he was?

A. I told him, "Captain," I says, "you're a drifting." He said, "No, I aint." I said, "You'll go ashore." He said, "It's all right if I go ashore."

Q. Didn't he say it sort of tersely as much as to say its not [215] any of your business if he goes ashore or not? A. That is it exactly.

Q. That is the sense he used, that is, you understood that from his tone, the way he said it?

A. Yes.

Q. Now, how soon after the parting of that line did the captain of the "Halcyon" drop his anchors?

A. Oh, well, few minutes afterwards; he had to wait awhile to drift away from the buoy to drop his anchor, otherwise he'd drop it on the buoy's anchor.

Q. So he began to drift immediately with the parting of the hawser?

A. When he parted the hawser he was right up against the buoy; he wasn't drifting then.

Q. You say he was right up against the buoy?

A. We went against the buoy when the line parted.

Q. How far was the "Halcyon" from the buoy?

A. The line was almost up say about forty-five degrees; just about that way.

Q. How many fathoms of line were there from the

(Testimony of Manuel Lacerdo.)

“Halcyon” to the buoy when the line parted?

A. When the line parted it wasn’t any more than about eight fathom.

Q. You’re sure of that; that’s the most that it could have been, eight fathoms?

A. Yes, just about.

Q. Later on, did you see that part of the line that was on the “Halcyon”? A. Yes.

Q. How many fathoms was that?

A. It was only about eight fathoms then when they hauled it up.

Q. So that the remaining part of that line that was aboard the “Halcyon,” which you saw, you say was only about eight fathom long. When you say that the “Halcyon” was right up against the buoy, do you mean that she touched the buoy?

A. Well, why, yes, she touched the buoy and the captain had to wait awhile so she drift away from the buoy.

Q. Well, Manuel, how could she touch the buoy if the line parted [216] before she ever got to the buoy if the swells and sea were directly against her?

A. Well, I could see she had to run into the buoy because the buoy was right ahead of her, and after the line parted the ship has to go a couple of feet ahead.

Q. You mean there was enough momentum to that vessel to carry it eight fathom after the line parted?

A. Yes.

Q. Why, the tow was just creeping along?

(Testimony of Manuel Lacerdo.)

A. Just creeping along, yes; but when you get a heavy vessel like that she'd go some way along.

Q. As a matter of fact, the heavier the vessel the less momentum?

A. The heavier the vessel the more she goes; takes more to stop her.

Q. Then she struck this buoy after going ahead eight fathom. You say she stopped there for awhile? How long?

A. She took the buoy ahead a little ways and she drifted towards the Hilo side.

Q. Then she started going back toward Hilo?

A. Yes.

Q. Well, so that there wasn't any appreciable length of time that she remained still, was there? Just for a moment?

A. Just for a moment then she was still.

Q. Then as she started to drift toward the Hilo side, she continued to drift right along?

A. Didn't continue to drift, but dropped her anchor; that holds her a little while; held her a little while then, after she started to drift, you know. I don't know just exactly when the ship was stopped and the captain dropped her anchor.

Q. Stopped there maybe five or ten minues?

A. About that.

Q. Then she started to drift?

A. Started to drift about inch by inch.

Q. You could see it yourself?

A. I could see she was drifting.



(Testimony of Manuel Lacerdo.)

Q. And called the captain's attention to it?

A. Yes.

Mr. WARREN.—Q. What captain? [217]

Q. Captain Olson? A. Yes.

Q. And the "Halcyon" was right in view of the "Niihau," wasn't she?

A. Well, the "Niihau" was more towards the railroad wharf and the ship more towards the Hilo side.

Q. But it was in view of it? A. Yes, it was.

Q. They were in a position to see it drift just as you were?

A. No, they couldn't see it just where they were; they couldn't see it.

Q. They couldn't see it?

A. They couldn't see it, no.

Q. Because she was drifting on the same line with the "Niihau" was in? A. Yes.

Q. Now, assuming that H-3—you see this H-3—is the "Halcyon" in the direction she was drifting—

Mr. WARREN.—Just a moment. I object to that; that position of H-3 on that map is not, under any of the testimony.

Mr. RUSSELL.—I assume simply that one time or other the "Halcyon" was at H-3, and I'm asking the witness assuming that H-3 was the "Halcyon," in which direction relatively was she drifting?

Q. Are you familiar with this map? That is, do you recognize the railroad wharf and Hilo harbor from this map, calling your attention to this as being the railroad wharf.

(Testimony of Manuel Lacerdo.)

The COURT.—Point him out the river.

Mr. RUSSELL.—And here's Waiakea River; here is the Hilo postoffice, and this is the Wailuku River. Do you recognize the harbor?

A. I can't make out, couldn't get the buoys here.

Q. No, no, this is not the buoy. You don't pay any attention to these marks. Bearing in mind that this is the land, do you now recognize the situation of the harbor? A. This is the railroad wharf?

Q. Yes. [218]

The COURT.—Point out Cocoanut Island and the position of the buoys. He is more accustomed to them.

A. Just a minute, I'll get it. Now, you say this is the railroad wharf here and here's the Waiakea River.

Q. Here's the Waiakea River.

A. Here's the Waiakea River and here's the railroad wharf.

Q. Here's the piles. Well, I guess we can get it more reliably otherwise. Now, at the point where the tow parted, with reference to the railroad wharf and the end of the railroad wharf, where was your, where was the "Halcyon"? A. The "Halcyon"?

Q. Yes. A. When?

Q. At the time the line parted, the hawser parted.

A. The hawser parted?

Q. Yes.

A. She was about half-way of the wharf.

Q. And about how far from the wharf?

(Testimony of Manuel Lacerdo.)

A. I can't exactly tell you.

Q. Well now, as she was drifting in which direction was she drifting?

A. She was drifting more towards the Hilo side.

Q. On a line toward the postoffice, do you think?

A. No, on a line towards the Kilauea Hou's boiler.

Q. Do you recognize where that is, where the boiler is? Never mind, don't attempt it. Now then, with reference to where the "Halcyon" was, where was the "Niihau" anchored at the time the "Halcyon" began drifting?

A. The "Niihau" was anchored right in straight line with the *whaft* at the end of the wharf.

Q. And how far beyond the end of the wharf?

A. You mean how far from the end of the wharf?

Q. Yes, how far from the end of the wharf?

A. She was just about the end of the wharf.

Q. Yes, how far off the wharf?

A. About the same distance as when the ship parted the line; she [219] was in straight line.

Q. How far from the end of the wharf?

A. It's pretty hard for me to tell you.

Q. Six or seven hundred feet? It was at least that, wasn't it?

A. Well, somewheres around that.

Q. Where were you at time you say that you saw her drifting after she had dropped her anchor?

A. I was alongside that buoy trying to get that line that the captain sent me over to try to get it off.

Q. The "Halcyon" being in a position that you described it, she wasn't on a line between the

(Testimony of Manuel Lacerdo.)

"Niihau" and the old boiler, was she?

A. Well, she was in line by the way the wind was blowing.

Q. Well, if you should draw a straight line from where the "Niihau" was to the old boiler that line wouldn't come within six or seven hundred feet of the "Halcyon," would it?

Mr. WARREN.—Just a moment. I'd like to have that testified to as the position of the "Niihau" at the time the line broke or after she went over and anchored.

Mr. RUSSELL.—I've been asking this witness at the time she began drifting, after the anchor was dropped.

The COURT.—You mean as she stood at the end of the wharf anchored?

Mr. RUSSELL.—My particular point is this, to determine the possibility of the "Niihau" observing whether or not she was drifting.

Q. That was before she hooked on to her?

Mr. RUSSELL.—Oh, yes, before she hooked on to her the second time.

The COURT.—And the "Niihau" was lying at anchor?

Mr. RUSSELL.—The "Niihau" was lying at anchor.

Q. You understood, did you not, when I asked you what was the position of the "Niihau" that I meant after the line had parted and she had anchored out there beyond the railroad wharf? You [220] understood that I meant that?

(Testimony of Manuel Lacerdo.)

A. Yes, I understood that.

Q. And then you also understood that when I asked you in regard to seeing the "Halcyon" drift in it was after she had dropped her anchors? A. Yes.

Q. Well, now, was not the "Niihau" in a position to see the "Halcyon" drift in toward the boiler if she were drifting? A. Well, it couldn't see her.

Q. Why not?

A. They were out in straight line with the vessel.

Q. In a straight line with the vessel?

A. Yes, they were outside and the ship was inside and the ship was drifting in this way.

Q. Yes, but if she was drifting in toward the boiler, she wasn't drifting towards Hilo?

A. She was drifting toward the boiler; if was drifting straight inland but kind of Hilo side.

Q. If the "Niihau" was way out beyond the end of the wharf and the "Halcyon" was on the Hilo side of the wharf; that is, about near the buoy, the "Halcyon" would not be in a straight line between the boiler and the "Niihau," would she?

A. Well, no.

Q. It would make almost right angles, wouldn't it?

A. The ship would be out towards the Hilo side if you'd draw from the boiler a line out to the "Niihau."

Q. The Hilo side of that straight line? A. Yes.

Mr. WARREN.—No, I don't think that's what the witness means at all. Did you just mean to say that the schooner was on the Hilo side of a line between

(Testimony of Manuel Lacerdo.)

the "Niihau" and the boiler?

A. Yes, when she dropped her anchor.

Q. You know where the boiler is, don't you?

A. Why, certainly, yes I do.

Q. So you say that the "Niihau" couldn't tell that she was drifting [221] because the "Halcyon" was on a line, a straight line between where the "Niihau" was and the boiler is, is that right?

A. Yes.

Q. You say the wind was about twenty-five miles an hour?

A. About that or more; I couldn't exactly tell but she was blowing about that.

Q. Now, you spoke about the boiler being two hundred feet; that is, the "Halcyon" being two hundred feet from the boiler. Do you mean that in a straight line from the boiler to the "Halcyon," or do you mean a line from the boiler to the beach, the nearest point to where the "Halcyon" was?

A. Oh, from the boiler to the "Halcyon" stern.

Q. From the boiler to the "Halcyon"?

A. "Halcyon's" stern.

Q. Then when you saw her as you say on the beach, on which side of the boiler was she?

A. The boiler was on the Hilo side.

Q. She wasn't going toward the boiler?

A. Well, she would have swung about on the boiler, towards the boiler.

Q. Sandy beach there, isn't it?



(Testimony of Manuel Lacerdo.)

A. A sandy beach, yes.

Q. How many lines did they put on the "Halcyon"? A. Which?

Q. How many lines did the "Niihau" put on the "Halcyon" when she was there?

Mr. WARREN.—When?

Mr. RUSSELL.—On the beach. I said at the time she was on the beach?

A. All I seen was one line.

Q. Did you ever see more than one line?

A. All I seen was one line from the steamer to the ship.

Q. I say, that's all that you saw? A. Yes.

Q. You were noticing the towing at the time that she was there [222] at the beach?

A. Yes. I was on the port side of the ship and the steamer quite aways out just in between the two.

Q. And all you noticed was one line? A. Yes.

Q. You say that when they started to tow her they straightened her out with her stern to the beach and then her bow in a direct line to the "Niihau"?

A. Yes.

Q. And did that take very long?

A. Takes them quite awhile; took them about a half an hour or so.

Q. Half an hour from what point; from what time did you begin to reckon that half-hour? From the time that they started?

A. From the time that she started to go ahead getting her line taut.

(Testimony of Manuel Lacerdo.)

Q. From the time they had their lines taut?

A. Yes.

Q. Until she was straightened out, you say she took about a half-hour?     A. About a half-hour.

Q. And then after she was straightened out how long a time did it take before they started out into the harbor?

A. Well, it took them quite awhile; it took them about, well, say about an hour or so.

Q. About an hour or so?

A. About an hour, yes.

Q. You mean to say then they were about an hour and a half there on the beach?     A. Yes.

Q. Do I understand that Captain Mosher was in your boat?     A. Captain was then on deck.

Q. And did he board the "Halcyon"?     A. Yes.

Q. And you took him right up to the—

A. To the ship.

Q. And how did he get aboard the "Halcyon"?

A. He climbed on the rigging. [223]

Q. What do you do now?

A. I'm at the same job.

Q. Are you in the employ of the Inter-Island?

A. No.

Q. You do work for them?     A. No.

Q. You own your own launch?

A. I'm running the launch for the Waiakea Boat-ing Co.

Mr. RUSSELL.—That's all.

(Testimony of Manuel Lacerdo.)

Redirect Examination.

Mr. WARREN.—Q. You said that tow-line broke about eight fathoms ahead of the “Halcyon”?

A. Yes.

Q. Have you any idea how much line there was on board the “Halcyon” that was used to make fast?

A. No, I couldn’t tell because I wasn’t aboard.

Q. Then do you know what the total length of that broken piece was? Was it more than the eight fathoms that they had over the bow or do you know at all? All you can tell us is there was about an eight fathom piece that was the distance between the buoy and the “Halcyon” when the line broke. Do you know whether there was any more on board?

A. It’s supposed to have more on board to make fast to the bit.

Q. But you don’t know how much?

A. I don’t know how much.

Q. After the thing was over did you measure the whole piece, including what had been used to make fast with? A. No, I can’t tell.

Q. You don’t know what that whole length was?

A. No, I just figured from the buoy outside of the ship, over to the end, about eight fathoms.

Q. So that in saying that the piece was over eight fathoms long, [224] you don’t mean to take into consideration what there may have been on the ship besides? A. No.

Mr. WARREN.—That’s all.

(Testimony of Manuel Lacerdo.)

Recross-examination.

Mr. RUSSELL.—Q. Did you say that you saw that piece after that day?

A. I saw the piece that was hanging outside the ship to the end, about eight fathoms; that's all. I don't know just exactly how much they have on board.

Q. Didn't you ever see that hawser after the time it parted that morning? You never saw the hawser on the "Halcyon"?

A. No, I didn't go aboard to look at it.

Q. Did you see it after it was taken from the "Halcyon"?

Mr. RUSSELL.—That's all.

The COURT.—Q. Why did you go on to the roof of your boat-house to watch the "Halcyon"?

A. Well, it was because I knew she was drifting; I could see it.

Q. What was the state of the sea, the weather in the harbor, the waves?

A. The waves? How high they were?

Q. Yes. A. Well, about four or five feet.

Q. Do you know why the schooner didn't follow on the first tow, follow the steamer? That is, was it the wind that blew her to leeward or was it the steering? A. It was the person who was steering.

Q. You think it was that entirely? A. Yes.

Q. That buoy is a can buoy that you saw cut the rope? A. Yes.

Q. Iron buoy? A. Wooden buoy.

(Testimony of Manuel Lacerdo.)

Q. Wooden buoy?

A. It's made square, about twelve by twelve; it's all nailed together to be about twenty-four inches by twenty-four.

Q. It just lies flat on the water? [225]

A. No. It was floating. It was just newly there.

Q. Now, when the "Halcyon" was at H-2, that is, on the beach as you call it, stern on the beach, where was the line of the breakers in reference to that?

A. The line of the breakers?

Q. Yes, the outside line of the breakers?

A. Oh, well, just up about her stern.

Q. There's where the line of the breakers was?

A. The line of the breakers, yes; just about before her stern.

Q. Did they break on her?

A. No, they broke right behind the stern.

Mr. RUSSELL.—Q. How fast was that tow proceeding?

The COURT.—Which tow, the first or the second?

Q. The first tow at the time you say they weren't steering. A. How fast?

Q. Yes.

A. Well, a little ways like that I can't figure just that.

Q. Did she have enough way to steer?

A. She had enough to steer her, yes.

Mr. RUSSELL.—That's all.

**Testimony of Kaimi, for Libellant.**

Direct examination of KAIMI, a witness on behalf of Libellant, called and sworn.

Mr. WARREN.—Q. Kaimi, did you go out in the launch with Manuel when the "Halcyon" was in trouble?     A. Yes.

Q. And where did the launch go?

A. The launch went alongside the ship.

Q. Did you hear anything said between Manuel and the captain?     A. Yes.

Q. What did Manuel say?

A. Manuel asked the captain if he want any hand running the line to the buoy; the captain said all right. [226]

Q. Said all right?

A. He said that is all right he don't want the line.

Q. Said what?

A. The captain says he was all right. He told Manuel to go and take his line off from the buoy; we went over there and tried to get him off; couldn't get him off; all tangled with the chain, so Manuel went back again, asked him if he want another line running to the buoy; the captain said he was all right.

Q. He said he was all right?

A. Yes. Then we came back.

Q. You didn't go out the second time?

A. No, only one.

Q. How was the wind that day?

A. Oh, the wind was blowing strong.



(Testimony of Kaimi.)

Q. Little wind, big wind, what kind of a wind?

A. Pretty big wind.

Q. How about the waves, the sea?

A. Big waves.

Mr. WARREN.—That's all.

Cross-examination.

Mr. RUSSELL.—Q. Did you see the line break?

A. Yes.

Q. Did you see it the time it broke?

A. Yes, I saw the time it broke.

Q. How did you see, because it was in the air?

A. Yes, the "Niihau" was towing it, one big swell come; the line was up and he start to break.

Q. And you could see it yourself? A. Yes.

Q. You remember, captain, did he say anything to you when Manuel asked him if he wants line to buoy, captain say he didn't have no more line, to go and get the line from the first buoy? [227]

A. Manuel asked him if he want to run a line to the buoy; captain say no; he says he's all right. He told Manuel to go and take his own line; he get one small little line; told him to take him off. We went there to try to get it off; we couldn't get it.

Q. Told him to go and take it off and bring it back to him?

A. Yes; but we couldn't get it off.

Q. Do you remember the captain saying about his not having any more line?

A. He says he's all right he didn't want no line.

Q. How many lines to that buoy when you saw

(Testimony of Kaimi.)

the line all tangled up? A. One.

Q. That's all? Had one? That line that broke, how many fathoms from the place it broke to the schooner?

A. I don't know how many fathoms. I don't know how long that tow-line is but it broke pretty near in the middle.

Q. You say you don't know how long that tow-line is? A. I don't know how long.

Q. And that broke in the middle between the "Halcyon" and the "Niihau"?

Mr. RUSSELL.—That's all.

Mr. WARREN.—That's all.

**Testimony of Ralph Balding, for Libellant.**

Direct examination of RALPH BALDING, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—I'm not sure we can get very far with Mr. Balding without being on the ground. However, we will make a start.

Q. Mr. Balding, did you, on the morning that the schooner "Halcyon" was in trouble in Hilo Bay, take any note of her and where she was and so on?

A. Yes, I saw her drifting in there.

Q. What position? Where were you at the time that you watched her more particularly?

A. I was in the roadway just opposite the Matson warehouse. [228]

Q. Opposite the Matson warehouse.

A. That roadway that runs to the wharf.

Q. From there did you have any mark or bear-

(Testimony of Ralph Balding.)

ings on the opposite shore which was in line with the vessel?

A. There was a house over there near the end of this railroad bridge down here. We had a line to that and the vessel.

Q. Near the Wailuku River? A. Yes.

Q. Which side of the bridge was that; the outer or inner side? A. Hamakua side.

Q. What color was it?

A. As I remember, it was a red house.

Q. Is it there now?

A. I was over there the other day and there's no red house.

Q. Is there a house with a red roof there?

A. There is a house with a red roof.

Q. Is it close to the railroad bridge?

A. Right at the end of the bridge.

Q. So that for all practical purpose that would be the same thing? And you would be able to go out on that road and take about the same position you had and locate that bearing?

A. About the same, yes.

Q. Now, what part of the ship was in line with that bearing?

A. I don't remember. We had one of the masts. I don't remember whether it was the mainmast or the foremast or which one it was.

Q. Have you any remembrance of judging from your position how far she was from the beach?

A. I didn't take any particular notice.

Q. Could you from your position? Do you re-

(Testimony of Ralph Balding.)

member that you saw the beach?

A. I don't even remember seeing it.

Q. On that day, how high was the water washing up along that shore? Could you tell us that?

A. As near as I remember, it washed up about to the railroad track. It was washing up high then.  
[229]

Q. Now, did you take any note of the movement of the schooner as she was in that position?

A. What do you mean? As to her drifting in?

Q. Yes. How she acted?

A. Well, she was drifting in pretty fast.

Q. When you got this bearing, was she still drifting in or had she stopped?

A. No, she was drifting in yet.

Q. Did you watch her till she stopped drifting? From that position?

A. I left there when they ran up the signals.

Mr. RUSSELL.—Q. I didn't understand what you say.

A. When they ran up the signals I went into the warehouse to telephone. When I came out there was a boat going after her.

Q. Did you see the signals go up? A. Yes.

Q. And how far was she from that bearing that you had when those signals went up?

A. About on a line of it, I think.

Q. Could you determine from where you were after the flags went up whether or not she was on the beach, her bottom touching.

(Testimony of Ralph Balding.)

A. No, I don't think I could when the flags went up.

Q. When the flags went up could you tell then?

A. I don't know whether it was before the flags went up or afterwards. She was rising on the waves there and she'd go up and come down and sort of bring up there.

Q. Would that be forward or stern?

A. Her stern. I remember that. I think she did it twice.

Q. When you took your last observation from that position, do you know whether she was still drifting or whether she had stopped?

A. I think she was going in.

Q. When you left that location—

Mr. WARREN.—Except for going on the land and having that bearing pointed out which I would like to do, you may cross-examine. [230]

Cross-examination.

Mr. RUSSELL.—Q. You say that you saw the distress signal go up and you don't recall whether she was still drifting then or not?

A. I think she was drifting all the time until the Inter-Island boat got ahold of her.

Q. You are quite sure of that. You could see her. She was going in rather rapidly until they got hold of her? A. Yes, sir.

Q. And how long a time elapsed from the time that the signals went up until they got hold of her?

A. I don't know. I wouldn't like to say. It's another thing I don't remember.

(Testimony of Ralph Balding.)

Q. Do you recall if they got hold of her how long it was before they started towing her out?

A. I think as soon as they got the line on her they started towing her out.

Q. Up until the time that you saw the signals go up, you hadn't seen any boat going toward her?

A. No, I'd paid no attention to it at all.

Q. And after the signals went up you went inside to telephone and then when you came out you saw a boat going toward the "Halcyon"?

A. One of the steamer's boats.

Q. Did she drift more rapidly as she got near to shore or did she continue about at the same speed all the time?

A. I think, if anything, she drifted a little slower as she got in.

Q. But you're quite certain that she was drifting at the time that they got hold of her?

A. Yes, as I remember it.

Mr. RUSSELL.—That's all.

The COURT.—Q. Mr. Balding, what was the state of the weather where she was? What was the surface in regard to the waves, the surf or breakers?

A. It was pretty rough. I think the stern of her was in the breakers, as I remember it.

Q. Water going over her stern?

A. No, I don't think so. [231]

Mr. RUSSELL.—Q. When did you first notice her?

A. Oh, it must be somewhere around six o'clock when I first saw her.



(Testimony of Ralph Balding.)

Q. At that time was she free of the "Niihau"?

A. When I first saw her, I think the "Niihau" was towing her out and she dropped her anchor alongside the "Enterprise."

Q. Then did she drift from the time you first saw the "Halcyon" drop her anchor?

A. Well, I don't remember. After that I went up to breakfast. When I came back—

Q. Do you recall whether you saw her drifting any before you went to breakfast?

A. I don't think so.

Mr. RUSSELL.—That's all.

Mr. WARREN.—Referring to the matter of the signal that went up compared with the time that you first observed one of the small boats from the "Niihau" going with the line, you say you saw the signal first? A. Yes.

Q. Are you willing to say that the "Niihau" boat was not approaching her at that time?

A. I wouldn't say that. I didn't see it. It might have been. I was more interested in the schooner than I was in the "Niihau." I wasn't paying any attention to the "Niihau."

**Testimony of R. W. Filler, for Libellee.**

Direct examination of R. W. FILLER, a witness on behalf of libellee, called and sworn.

Mr. WARREN.—Q. Have you ever followed the sea, Captain? A. I did.

Q. And you hold a master's license. You have had some experience at sea?

(Testimony of R. W. Filler.)

A. Eight years before the mast.

Q. Sailing vessels?      A. Yes.

Q. Did you observe the "Halcyon" when she was in trouble in the [232] harbor here something over a year ago?      A. I did.

Q. Did you at any time when the vessel was drifting toward the beach have any bearings by which you took her position at any time?

A. I noticed that the ship was in distress and I wanted to ascertain whether she was aground or whether she was still drifting, so I had a mark on the opposite shore and I knew she was still drifting.

Q. Where were you standing?

A. Somewhere on the road toward the railroad wharf; directly opposite the Matson warehouse, to the best of my recollection.

Q. What bearing did you have on the other shore?

A. I couldn't state now. I had some mark. It must have been Mr. Severance's house.

Q. If you were to go to that spot, do you think you could locate that mark?      A. I think so.

Q. And was that very far from the end of the bridge on the other side?

A. Heading towards the railroad wharf.

Q. The bridge on the Wailuku River, on that side?

A. Wailuku.

Q. Is that the right name of it; that bridge on the Hamakua side?

A. Yes. That would be Wailuku River, yes.

Q. Was that house that you had for a mark anywhere near the edge of that bridge?

(Testimony of R. W. Filler.)

A. I was standing here.

Q. Can you locate on the map here about where you were standing and about where your bearing was?

A. I was standing here and the ship was in this direction and I must have had a mark. If I'm not mistaken it was either the Austin residence or the—

Q. Will you mark a blue cross on that side where that house was?

A. (The witness marks.) Approximately there.

Q. Now, will you make a cross about where you were standing on the road?

A. (Witness marks.) [233]

Mr. WARREN.—Witness marks a cross near Waiakea.

A. The road leading towards the wharf.

Q. Now, the ship was in that line?

A. Yes, in that line.

Q. And could you determine from that about how far she was from the beach, or did you try to fix that in your mind at all?

A. No. From recollection I would say a matter of six hundred feet; possibly a little more, but not very much.

Q. At that time was she still drifting?

A. She had come, as near as I can remember to a stop and she was gradually broaching to, as we call it; that is, broadside on to the sea with her head cut towards Wainaku.

Q. When I say the distance from her to the beach,

(Testimony of R. W. Filler.)

I don't mean from where you were, or from the direction, but from her stern towards land.

A. Towards land.

Q. You didn't at that time endeavor to fix it?

A. No.

Q. If you were there now, do you think you could form a judgment?

A. I think I could form a fairly accurate estimate of the distance.

Q. How did she act? Did you watch her to determine whether she struck or not?

A. Yes, she struck.

Q. Will you describe what she did?

A. She would lift bodily and come down; you could tell by the quiver in the spars she was struck; you see she began to swing.

Q. Did you see the signal flag go up?

A. I paid no attention to any signals.

Q. Did you observe the operations of the "Niihau" in connection with the signals?

A. I observed the operations of a steamer; whether it was the "Niihau," I could not say at this date.

Q. Whatever steamer that was. Did you see any boat go towards her?

A. I believe the line was fast to the boat at that particular time. [234]

Q. What did that steamer do?

A. The line was fast and I saw the line gradually tighten and not observing the steamer going ahead very rapidly I came to the conclusion that they must be heaving away on their anchor chains and, as a

(Testimony of R. W. Filler.)

matter of fact they did until they got a gradual strain on the lines, and after a time I could see her head swing off again and in a very, very gradual way the captain worked her off the beach. To the best of my recollection, at the time he had his anchor chains short he steamed ahead.

Q. Do you know whether he steamed before he got her head around or not?

A. He might have steamed slowly. I remember now he was heaving on his anchor chains.

Q. Are you more or less familiar with the depths of water around the harbor here?

A. In a general way.

Q. Have you had any occasion to investigate them in connection with the use of wharves?

A. Not at that particular spot.

Q. But generally?

A. Yes, I have a general idea of where the deep water contours are.

Q. From your recollection of where the schooner was at the time, do you believe she was in deep water?

A. I would form my estimate less from the actual knowledge of the depth of water as I would from the side of the vessel and her behavior in the water. I had an idea she was in about ten or twelve feet of water.

Q. Would that be forward or aft?

Mr. RUSSELL.—That is objected to, if the Court please, as not a proper subject of expert testimony.

(Testimony of R. W. Filler.)

The COURT.—Do you know anything of the depth of the water there?

A. Oh, in that particular locality I would surmise there would be anywhere between ten and fifteen feet of water.

Mr. WARREN.—But you personally haven't been over there to make [235] soundings?

A. No, I have not.

The COURT.—I think in regard to the action of the ship, that that's a matter for the Court.

Mr. WARREN.—Now, will you describe just the way the ship did act?

A. When?

Q. At the time when you say in your judgment she was ashore before they began getting her head around and while they were getting her head around?

A. Well, I hardly know how to describe it. A person must have had some personal experience in order to understand, but you can tell by the way in which the ship is lying when she is in shallow water and there isn't sufficient water under the keel.

Q. You've had that experience yourself?

A. Yes. I've had two experiences. One was with a ship of Kahului.

Q. Was there anything in connection with the vessel there that would lead you to think her stern was aground?

A. It is a known fact that a vessel the moment she gets into shallow water will broach to.

Q. Will she do that before she touches?



(Testimony of R. W. Filler.)

A. No, it's the consequence of the stern touching first and the wave action turning her around broadside.

Q. And particularly if she were dragging an anchor?

A. At that particular time she was past the stage of dragging an anchor.

Mr. WARREN.—I think aside from visiting the locality to-morrow morning in order to indicate where you stood so we can get that bearing and if necessary take a measurement, I am through with the direct.

Cross-examination.

Mr. RUSSELL.—Q. Captain, you didn't observe that vessel at all after she had a line from the steamer?

A. My mind is quite clear, to the best of my recollection, a line [236] was on her or being fastened at the time.

Q. Did you notice the vessel after they started to tow her; that is, up until the time they started to tow her out?

A. I was an interested spectator to see what was being done.

Q. How long a time would it take before they got started out into the harbor?

A. Oh, I should say from the time I came into the scene and until the vessel was heading straight for the sea and moving clear again, thirty-five minutes.

Mr. RUSSELL.—That's all.

(Testimony of R. W. Filler.)

The COURT.—Where was the surf-line in reference to the time she went broadside on?

A. The surf-line parallel to the beach.

Q. Where was the outside surf?

A. Oh, I saw the line of the breakers; I don't remember seeing any breakers ahead of the vessel.

Q. And how about her stern? Was she outside of the line of the breakers?

A. I couldn't recall it, your Honor.

Q. Were the breakers rather heavy?

A. Well, I've seen it break heavier there.

Q. What kind of weather would you call it?

A. Northerly weather, you know; northerly, rough, blowing pretty hard.

Q. How many miles an hour was the wind blowing?

A. About thirty miles; possibly not quite as much.

Tuesday, August 17, 1915.

(Court convened at the road leading to the railroad wharf, opposite the Matson warehouse referred to in the foregoing testimony.)

Mr. WARREN.—(Continuing direct examination of F. W. Filler.)

Q. Captain, could you, from standing here now, estimate that distance from shore any better than you could yesterday?

A. Well, you can see the distance there; it must be between four hundred, five hundred, or six hundred feet. The ship was dragging [237] you could see very plainly; there wasn't any doubt at all

(Testimony of F. W. Filler.)

about that. I could see before they brought any strain to bear on the hawser that the ship's head was pulling toward the shore all the time. When they got the strain on the line you could see her head come around at that time. As I say, I must have taken her *hearings*. I remember at the time that I admired the fellow's seamanlike way of doing things. He brought the strain on those lines so gradually; he took his time in coaxing her off the beach rather than hauling her off and running the risk of breaks his lines.

The COURT.—Before he commenced to get a strain on the lines, what did you see; did you see the starboard side of the boat?

A. I saw the starboard side of the boat.

Q. Was she heading towards Wainaku?

A. You see that big swash that comes under the stern when she sets down, that's what attracted me. I'm not quite sure now that I had the line on the Richardson premises or that white house. I don't think that white house was there at the time.

Mr. RUSSELL.—You are, of course, certain that it was on the Hamakua side of that bridge?

Mr. WARREN.—Your house.

A. I am fairly certain, I think.

(Court reconvenes in courtroom.)

### **Testimony of H. P. Morton, for Libellant.**

Direct examination of H. P. Morton, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. In January of 1914, you were purser on the "Niihau"? A. Yes, sir. [238]

(Testimony of H. P. Morton.)

Q. And will you state what happened so far as you are concerned when you left in a boat early of the morning of the day that the "Halcyon" was in trouble; just what experience did you have with the "Halcyon"?

A. We left the wharf, that is, where the gasoline boats are.

Q. In Waiakea?

A. At Waiakea, with some of the crew for to go out to the "Niihau." We were to sail that morning at about three-thirty A. M. As we got out to the mouth of Waiakea River, I noticed the schooner pretty close in. I thought that she was anchored at the time we passed her. At least we were along abreast of her and we heard somebody shouting for help.

Q. From where?

A. From the schooner. The "Ka Moi" was lying alongside the wharf and when we got along abreast the "Ka Moi," the captain of the "Ka Moi" told me that the schooner was in trouble.

Mr. RUSSELL.—I move to strike out what the captain of the "Ka Moi" *side*.

The COURT.—What did the captain say?

A. He told us, he spoke to me in Hawaiian; said that the schooner "Halcyon" was ashore and wanted a line.

The COURT.—That may be stricken. In consequence of what he said, what did you do? A. We—

Mr. WARREN.—Just a moment. I want to go back to the time you heard the calling from the

(Testimony of H. P. Morton.)

“Halcyon” to you. What was said between you and whoever it was on board the “Halcyon” about help. Did you say anything?

A. No, I don’t remember of ever saying anything. It was so long ago I don’t quite remember now. I might have said something.

Q. Well, in consequence of your passing that schooner and hearing that call for help what did you do?

A. We tried to get up as close to the schooner as possible.

Q. In your small boat?

A. Yes, and asked him what he wanted. He told me he was ashore and wanted a line. [239]

Q. Who was that on board, do you know?

A. I can’t recall whether it was the captain or crew.

Q. He said he was ashore and wanted a line?

A. Wanted a line.

Q. What did you say?

A. I said, all right, just as soon as I’d get out to the steamer I’d call the captain and see what he could do.

Q. Then what did you do?

A. We went aboard the steamer and told the captain the schooner “Halcyon” was ashore and wanted a line. He immediately got out of his room and got a tow-line ready. He ran a boat, in fact, the boat we were in. He sent the second mate. I don’t know if the second mate was in that boat already but he sent

(Testimony of H. P. Morton.)

a line to her and got a line fast to her and started to tow her.

Q. That's all I wanted to ask you. I don't want to cover the same ground too many times. Did you that night, either before or after you passed the schooner and had that conversation, see any signal or flarelights from the schooner?

A. No, we didn't see any flarelights at all only a light away aft that might have been the cabin just near daylight.

Q. Will you describe just as particularly as you can just where the "Halcyon" was, how far from shore, how far away from the Waiakea River and so on, the best you can?

A. I believe she was about fifty feet off the piles there, parts of the old Hackfeld wharf.

Q. Could you make a mark that would locate the "Halcyon" when you passed her the first time?

A. Are these the piles here?

Q. That black line, yes.

A. I should judge she was about here.

Q. Will you make a round dot and heavy line with pencil?

A. I guess this is just about where the Hackfeld wharf is, just abreast of that would bring it about here. (Indicating.)

Mr. WARREN.—The map now shows a black dot near the end of the piles connected by a line with the letters H. P. M. [240]

The COURT.—I'd like to have you read from the chart the standard of measurement.



(Testimony of H. P. Morton.)

Mr. WARREN.—The scale of the chart is 1 to 10,000.

Q. Your effort, Mr. Moreton, to mark this, has no reference to scale? A. No.

Q. So that independently of this map you say she was fifty feet from the end of the piles? A. Yes.

Q. How far in distance from the Hackfeld wharf?

A. About four times that distance; about one hundred and fifty feet to two hundred feet.

The COURT.—When you're talking about her, are you speaking of her stern?

A. I'm speaking, you see, the ship was not heading out at the time. She was heading then more or less towards the end of the Mauna Kea wharf.

Q. Here's a big three-masted schooner, when you're speaking of fifty feet, what part of the schooner are you referring to?

A. About amidships and maybe a little aft.

Mr. WARREN.—If it was fifty feet from the end of the piles to amidships her stern would be whatever nearer distance the half of the ship was? A. Yes.

The COURT.—I don't think that can be so because here's a ship that is three hundred feet long, two hundred feet long.

A. I don't believe she's two hundred feet long. When I say fifty feet off the end of the piles, I mean directly out from the piles.

Q. From the piles to her stern. Can you take a sheet of paper and make a sketch; better sketch the mouth of that Waiakea River, the Hackfeld wharf, the river mouth, and piles; then locate the schooner.

(Testimony of H. P. Morton.)

A. What I mean fifty feet, she was fifty feet this way from the pile; might have been more that way, about two hundred feet or one hundred and fifty feet off the Hackfeld wharf.

Q. Write that word there, please. Hackfeld wharf.

(Witness writes.) [241]

Q. Now, over here mark piles by the word piles.

(Witness writes.)

Q. Now, the Waiakea River is where?

A. The Waiakea River is about here. (Indicating.)

Q. Just connect that up with the piles.

The COURT.—Then that's about the position she was lying, was it?

A. Yes. This will be about fifty feet. I mean fifty feet directly out.

Mr. WARREN.—Toward the Mauna Kea wharf from the end of the piles?

A. Yes; directly fifty feet out this way, out towards the bay; the schooner was lying on this side of the piles.

Q. Closer to the shore than the piles?

A. Yes. The shore is here; closer this side; say about a hundred feet off that way.

Q. And you change your old evidence from fifty to a hundred feet?

A. No, fifty feet out this way and about a hundred feet out this way.

Q. Will you mark on this line fifty feet?

A. This first one.

(Testimony of H. P. Morton.)

Q. That indicates as I understand it, the distance she was toward Hilo bay from the piles? A. Yes.

Q. But at the same time she was about a hundred feet from the end of the piles measuring in a direction from the piles toward the Hackfeld wharf?

A. Yes.

Mr. WARREN.—I offer that.

The COURT.—Mark it exhibit made by H. P. Moreton.

(Mr. Warren marks.)

The COURT.—It may be admitted. (Libellant's Ex. "A.")

Cross-examination.

Mr. RUSSELL.—Mr. Moreton, I don't quite understand what you mean by having a measurement fifty feet one way and a hundred [242] feet the other way, You are measuring both distances from the end—

A. From the end of the piles.

Q. And you have here marked as a position of the schooner with the stern to the end of the piles?

A. Towards the end of the piles.

Q. Practically so? A. Yes.

Q. Then you have a hundred feet from her stern to the end of the piles?

A. Just about a hundred feet, yes.

Q. Well, now, measuring from the stern to the end of the piles with her stern to the piles is a hundred feet. You have a measurement there of the shortest distance between the end of the piles and the stern.

A. I don't get what you're talking about.

(Testimony of H. P. Morton.)

Q. You have her position here, this being the end of the piles and the schooner lying with her stern to the end of the piles.

A. I won't say she was lying in a direct line; she might have been a little more this side probably, but she was not heading directly out in the bay; that's my idea.

Q. As you have it here you have a distance from the stern of the schooner to the end of the piles as a hundred feet. A. About a hundred feet.

Q. Now, when you measure fifty feet, you measure from the end of the piles to what part of the schooner?

A. Well, that would bring you about to near the stern of the steamer and not quite amidship.

Q. You mean this, that the stern of the vessel was on a line fifty feet from the end of the piles and then measuring it also on a line to the, say to the end of the wharf, to the end of say the railroad wharf, she was a hundred feet to the wharf, wasn't she?

A. Yes.

Mr. WARREN.—Which would it be, the railroad wharf?

Q. When you drew the railroad wharf this Hackfeld wharf should [243] be further in here. The railroad wharf would be about here?

A. My drawing this map here kind of balls things up a little. The "Ka Moi" was lying here and she wasn't far from the schooner.

Q. How far away was the "Ka Moi" from the schooner at the time?

(Testimony of H. P. Morton.)

A. I can't tell you that because it's hard telling it going out on a dark night when you can see just a few feet ahead of you; approximately about two hundred or two hundred and fifty feet from the "Ka Moi."

Q. And how far would you say she was, where the Hackfeld wharf is from the shore end of the railroad wharf?

A. About a hundred feet I should think or one hundred and fifty or maybe less.

Q. And then your relative measurements when you refer to *tis* being, the "Halcyon" being a hundred feet from the end of the wharf was about the same as the measurements you referred to with regard to the other boats? A. What is that?

Q. For instance, when you say that Hackfeld's wharf is about two hundred feet—

Mr. WARREN.—I object to that?

A. I said about one hundred or one hundred and fifty.

Q. You say that the Hackfeld wharf is about a hundred or hundred and fifty feet away from the railroad wharf? Then the schooner was about the same distance or a little distance from the end of the piles as the railroad wharf is from the Hackfeld wharf? A. Yes, about.

Q. Now, these are approximate measurements?

A. Approximate, yes.

Q. It was pretty dark that night? A. Yes.

Q. And you didn't pay any particular attention to the distance, did you? A. No.

(Testimony of H. P. Morton.)

Q. And these distances that you testified to now are the distances that occurred to you sometime after this thing had happened? A. Yes. [244]

Q. And those are your recollections? A. Yes.

Q. Now, when you came out of the Waiakea wharf; that is, when you came out of the Waiakea River, you say you thought she was anchored?

A. Yes, at the time I thought she was anchored.

Q. That is, she was perfectly still?

A. She was rolling quite a bit; quite a sea running that night.

Q. She didn't seem to be moving except for rolling? A. Yes.

Q. And you didn't pay any attention to her until someone called from the schooner?

A. No. Well, I did notice something kind of funny her being so close in.

Q. But you didn't pay any further attention to her until they called to you? A. Yes.

Q. And then they asked you for a line; that is, to tell the "Niihau" to get a line? A. Yes.

Q. You say someone on that vessel told you the vessel was ashore? A. Yes, sir.

Q. Do you know the depth of the sea around that point?

A. I do not. I haven't the least idea.

Q. Did you bring the tow-line back?

A. What's that.

Q. Did you bring the tow-line back?

A. I did not.

Q. After you got on the "Niihau" they sent some-



(Testimony of H. P. Morton.)

body else with the tow-line? A. Yes, sir.

Q. You're still in the employ of the Inter-Island?

A. Yes, sir.

Q. How long did it take after you were told, after you were asked to take a line to the "Halcyon" before the "Halcyon," before you started towing her out?

A. I should say about three-quarters of an hour, half an hour, or thereabouts. [245]

Mr. RUSSELL.—That's all.

Mr. WARREN.—That's all.

**Testimony of W. F. Thompson, for Libellant.**

Direct examination of W. F. THOMPSON, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Mr. Thompson, in the month of January, 1914, you were second mate of the Inter-Island steamer "Niihau"? A. Yes, sir.

Q. And you were present and took part in the operations when the "Niihau" assisted the schooner "Halcyon" in Hilo Harbor? A. Yes.

Q. Now, were you on board the vessel when word came to the "Niihau," when word came that a line was wanted by the "Halcyon"?

A. Yes, I was aboard at that time.

Q. Now, tell us what you had to do with the operations of the "Niihau"?

A. I had to get lines ready, get them in the boat; first the six-inch, coiled in the boat.

Q. Where did you get that line?

A. From the steamer "Niihau." Then bent a four-inch line on, they *they* would take the whole

(Testimony of W. F. Thompson.)

line. Then they started for the schooner "Halcyon."

Q. How did that boat go from the "Niihau" to the "Halcyon"? A. How did she go?

Q. How did it get from one place to the other? Did they row?

A. They rowed; they pulled at the oars.

Q. In what manner did the boat go from the "Niihau" to the schooner. You say rowed with oars?

A. Yes, sir, rowed with oars.

Q. How was the line arranged?

A. The six-inch line was coiled in the middle of the boat and we bent it on the four-inch line.

Q. The other end of the four-inch line being fast where? [246] A. On the "Niihau."

Q. When they reached the "Halcyon," they paid out from the boat?

A. When they got alongside the "Halcyon" I assumed they got the line aboard and then got off.

Q. You were not aboard? A. Not the first boat.

Q. All you know is that the boat was dispatched with the line as you have described? A. Yes, sir.

Q. And the boat came back? A. Came back.

Q. What did the "Niihau" do?

A. The "Niihau" hauled in on the four-inch line till they got the six-inch line; we hauled it right on the steam winch forward; that's the most powerful winch we've got; they hauled them in until they got the six-inch line on board.

Q. What did they do?

A. I was standing aft. I believe they hove in on her anchors.

(Testimony of W. F. Thompson.)

Q. What was done with the six-inch line when you got it aboard?

A. That was made fast right foward on the bits.

Q. For the purpose of sending a line to the "Halcyon," what move did the steamer "Niihau" make? Did she change her position at all?

A. Yes, sir, she changed her position.

Q. Describe how she did that?

A. In the morning, about four o'clock I was waked up; the purser and the boat's crew they came off and report the "Halcyon" was ashore; we was lying pretty well out.

Q. What did you do?

A. Captain, he gave orders; he got in and moved the ship in.

Q. Moved her in where?

A. In towards the railroad wharf so that we could drop down towards the "Halcyon."

Q. What course did he take as respects the buoys on the Hilo side of the railroad wharf? Where did he go, inside or outside the buoys?

A. Dropped outside of them buoys. He didn't go inside them, I know that. It was dark in the [247] morning, I couldn't see.

Q. How many anchors did you put out?

A. There was two anchors put down.

Q. How much chain?

A. I believe I heard from the chief officer about eighty or ninety fathoms.

Q. You personally don't know that?

A. No, sir; I was aft.

(Testimony of W. F. Thompson.)

Q. How long was that six-inch line?

A. Supposed to be a whole coil, one hundred and twenty fathoms.

Q. Who broke that coil out? Did you have anything to do with breaking that coil out?

A. I don't think I did.

Q. Was it a new or old line?

A. No, sir, it was a brand new line.

Q. Could you tell us after the end of the six-inch line had been brought on board the "Niihau," the other end being on board the "Halcyon," what length of line it was? The distance between the boats?

A. Well, it's according they made that line on the "Halcyon" fast. If they made that fast, it would probably have six or seven fathom on.

Q. I'm asking you more particularly aside from how much they had on board the "Halcyon" and aside from how much they had on board the "Niihau," what the distance between the two vessels was after they got that line?

The COURT.—Was it light enough for you to see?

A. That time in the morning it was dark.

Q. Later on, when did that line part?

A. That line parted along after daylight.

Q. All right. So that when it came daylight had the line been shortened in any way?

A. No, after the first towing I couldn't tell whether it was or not.

Q. So that at daylight you could see the schooner "Halcyon" from the "Niihau" while you were towing? [248]

(Testimony of W. F. Thompson.)

A. Yes, sir.

Q. What is your best judgment of the distance between the vessels at that time?

A. It's pretty difficult; I couldn't give you anywhere about near the distances.

The COURT.—He wants you to say how far they were apart.

Q. Tell us what the distance was between the two vessels, the nearest you can estimate that.

The COURT.—From what you saw.

A. I should probably judge about four hundred feet.

Q. Now, after the boat had been sent down with the line and had returned, did any other boat go from the "Niihau" down toward the "Halcyon"?

A. Yes, one boat's crew. I went on the boat myself.

Q. How soon did you go after the line had been sent?

A. As soon as the boat returned, I had orders from Captain Bruhn to take the same boat's crew and lead line and go in there and sound to see what the water was around the "Halcyon." The crew refused to go in there without a surf-line. It was dangerous.

Q. What did you do?

A. I went in there with the boat's crew. They first took the lead line on the boat. Then we got a surf-line and we coiled the surf-line on the boat and left one end on the "Niihau" on the main deck forward so they could have it ready to take to the winch.

(Testimony of W. F. Thompson.)

When we got outside the breakers we swing the boat head into the wind and sea.

Q. What direction did you take?

A. We took a direction almost from the Waiakea River.

Q. How near did that operation bring your boat to the "Halcyon"?

A. Well, we was out, we was ahead of the bow of the "Halcyon" before we swung. I seen quite a bad sea running in there. For safety's sake I had the boat swung ahead to the sea. We could control her by our surf-line.

Q. How close did you get to the "Halcyon"?  
[249]

A. We got *then* off her starboard bow, I should judge about two boats' lengths the Waiakea River side of the "Halcyon."

Q. Then what did you do?

A. I took soundings.

Q. What sounding did you get?

A. As near as I can get with the sea running and boat shaking up and down, I got three fathoms forward.

Q. Did you take any other soundings?

A. I got in as far aft as I could get. I was probably between the mizzenmast and foremast. I got about two and one-half fathoms of water as near as I could judge.

Q. And any other soundings?

A. No, sir, no more soundings. We was anxious to get out of there as quick as we could.



(Testimony of W. F. Thompson.)

Q. How long have you been following the sea?

A. I went to sea when I was fourteen years old. I've been there most of my life.

Q. Are you acquainted with Hilo harbor?

A. I've been in Hilo harbor several times.

Q. Been in heavy weather before?

A. Yes, sir, all kinds of weather.

Q. In your opinion, was your small boat in any position of danger?

A. She was in considerable danger because if that boat capsized that would have been the last of us.

Q. At that time could you form an estimate of the distance of the schooner from the end of the piles at the mouth of Waiakea River? You know that line of piles?

A. I know that line of piles, yes, sir. No, sir, I could not; it was too dark.

Q. And could you form a judgment of how far the schooner was from the shore side?

A. From the shore side?

Q. From the shore to the schooner?

A. No, too dark. Too dark, I couldn't make it out; too dark [250] and blowing heavy; squally. I was anxious to get out of there.

Q. You didn't go on the starboard side of the schooner?

A. We went on the starboard side of the schooner to take soundings.

Q. Then you went between the schooner and—

A. We were between the schooner and the Waiakea River, the railroad wharf.

(Testimony of W. F. Thompson.)

Q. Then she was lying, or pointing, in what direction?

A. Here's the wharf this way and I think the schooner was pointing a little towards the Hilo railroad wharf, not on broadside or anything but heading out.

Q. Do you know where the old so-called Hackfeld wharf is?     A. Yes.

Q. How was she heading with respect to that?

A. Heading like this. The Hackfeld wharf runs almost the same.

Q. Would you know whether she was on the Hilo side of the Hackfeld wharf or further out? Could you tell that?

A. You mean was she further out to sea or was she in line with the wharf?

Q. Yes.

A. It is pretty hard to pick the Hackfeld wharf out that morning.

Q. How did you get back to the "Niihau" with that boat after taking soundings?

A. We waved to them or whistled to them and helped ourselves out. We had enough men in the boat to double bank some of the oars; that is, two men on each oar. We helped ourselves and they give us a heave on the winch.

Q. How long do you think the towing continued after the six-inch line had been made fast before the line parted?

A. Before that six-inch line parted that must have

(Testimony of W. F. Thompson.)

been between six and seven in the morning. It was very daylight when the line parted.

Q. About how much time had elapsed? How long was the towing not by the clock but in point of time?

A. How long had we been towing on the vessel?

Q. Yes.

A. Probably over an hour; been towing [251] on her over an hour.

Q. Do you know what parted that line? Do you know yourself?

A. No, sir, I don't know what parted that line.

Q. Did you see the broken end afterwards?

A. Yes, we hauled the broken end on the "Niihau," what was left; we hauled that hawser right in on deck.

Q. You saw the broken end? A. Yes, sir.

Q. Could you tell from your examination of that anything about the way it had been broken?

A. No, sir, I could not; I never took notice how it was broken; whether it carried away or they cut it or how.

Q. Did you afterwards recover the portion of that line from the "Halcyon"? A. Yes, sir.

Q. How much was that piece that had been broken off?

A. I should judge that line was about twenty-five or thirty fathom.

Q. That broken piece? A. I didn't measure it.

Q. You went to the schooner afterwards and got it?

A. Yes, we went to the schooner afterwards and got it.

(Testimony of W. F. Thompson.)

Q. Did you see any flare lights or signals from the "Halcyon" immediately before that line was put on?

A. No, sir, no flare-up lights.

Q. That you saw?

A. No, sir, no signals or anything from the "Halcyon."

Q. You were not observing before the purser came?

A. I was second officer. When we get away for outside ports, the chief officer he goes up.

Q. You were not up? A. No, sir, he goes up.

Q. Were you out when the purser came?

A. I got out when the purser got out, when I heard the vessel was in distress.

Q. When the line parted, what did the schooner do? [252]

A. The schooner dropped his anchor; dropped what anchor he had.

Q. What did the "Niihau" do?

A. We hauled in that line and we took our anchors up.

Q. How far did the "Niihau" go before she dropped her anchors?

A. It takes a little time to draw that line in, but it didn't take very long. I suppose she got outside the end of the railroad wharf there. I couldn't judge that distance.

Q. Now, after that and the "Niihau" had proceeded to drop her anchors, did you observe the "Halcyon"?

(Testimony of W. F. Thompson.)

A. I seen that she was anchored. She was anchored in a safe place, probably.

Q. Did you, after that at any time, notice her drifting or moving? A. No, sir, I did not.

Q. Were you paying any attention to her?

A. No, I wasn't paying no attention to the "Halcyon."

Q. How long after that was it before you did notice that she was moving?

A. I think it was probably about eight o'clock in the morning.

Q. Then what did you observe?

A. I observed that the "Halcyon," we got a line on the boat, the "Halcyon" hoisted up signals of distress wanted our assistance.

Q. You didn't notice her?

A. Our line was already coiled in the boat; we were going toward the "Halcyon."

Q. Why did the "Niihau" get her line in the boat and why was she sending that boat over to the "Halcyon" the second time?

A. I had orders from Captain Bruhn to do it. I don't know the wherefore.

Q. When the "Niihau" dropped her anchors after the line had parted, in what direction was the "Halcyon" from her? A. The direction from her?

Q. Yes. A. When the line parted?

Q. Yes.

A. As near as I could judge, she was right astern.

(Testimony of W. F. Thompson.)

Q. In what direction in regards to the wind and sea? A. Blowing a strong northerly gale.

Q. Do you know where the black boiler is on the beach?

A. I have seen it *sever* times; it belongs to the "Kilauea Hou."

Q. Now, with that boiler in mind, on the beach, can you tell us whether or not an imaginary line drawn from the beach to the "Niihau" when she was anchored was the "Halcyon" in or out of that line and if out, how much.

The COURT.—What do you mean by in or out?

Mr. WARREN.—One side or the other of the line from the boiler to the "Niihau."

A. You mean where was the schooner anchored after the line parted on the "Niihau"?

Q. Yes.

A. Well, I should judge she was anchored on the Waiakea side of the buoy; not on the Hilo side of that buoy but on the Waiakea side of that buoy. I should judge.

Q. About how much on the Waiakea side of the buoy from that line. We imagine the "Niihau" in her position and the boiler on the beach and a line drawn from the boiler to the "Niihau." Where would the "Halcyon" be, on which side? You say on the Waiakea side of the boiler?

A. On the Waiakea side of the boiler.

Q. Very far?

A. I don't think she could be a great deal off that boiler.



(Testimony of W. F. Thompson.)

Q. What direction by compass was the wind and sea?

A. Blowing on the north, I should judge that was; about due north.

Q. What direction by compass was the "Halcyon" from the "Niihau"?

The COURT.—You mean at that time?

Q. At that time when she had dropped her anchor?

A. Probably south or southeast; I didn't have no bearings on her.

Q. When you later saw the "Halcyon" down closer toward the beach, in what direction had she drifted by compass?

A. By compass she drifted to southwards; she was blowing right in. [254]

Q. With the wind and sea?

A. Yes, the sea would help it.

Q. The "Niihau" went a second time to her assistance? A. Yes, sir.

Q. And where did the "Niihau" take up her position at that time?

A. As far as I can judge, the "Niihau" took her position off the end of the railroad wharf ahead of the schooner "Halcyon" so she dropped right down ahead of her and run the tow-line.

Q. Did she pick up anchor to get in position?

A. I wouldn't swear to that, whether she did or not; picked up anchor or not. I know he run the line to her. I wouldn't swear whether she picked up anchors or not.

Q. And the second time when you went in a boat

(Testimony of W. F. Thompson.)

with the line, how did you get to the "Halcyon" that time?

A. The same way as we done the first time; coiled the line ready in the boat.

Q. And how close did your boat come to the "Halcyon"? A. The time with the line?

Q. Yes.

A. I know we was pretty well underneath the bowsprit, close enough they heaved us a line from the "Halcyon"; by the time I got our line on board fast on board the "Halcyon," probably couple of boat lengths off; probably three boats. They could have a heaving-line.

Q. When you got a heaving-line made fast, what did you do with the boat?

A. I waved to the captain that we were already fast; as soon as they told me they were fast aboard the "Halcyon," I waved to the captain of the ship. They heaved the line; we run ourselves right out on the same line.

Q. What is your best judgment of the distance the schooner was from the shore when that line was thrown on? A. When that line was put on to her?

Q. From the beach.

A. My best judgment that schooner [255] was aground astern.

Q. And how far from the beach was that?

A. You mean high-water mark?

Q. From the land. A. From the land?

Q. Merely your best judgment.

(Testimony of W. F. Thompson.)

A. Probably two hundred feet, three hundred feet; probably between two and three hundred feet.

Q. Did you at that time notice the position of that boiler on the beach?

A. No, sir, I couldn't see the boiler at that time.

Q. You didn't notice that?

A. I didn't notice it, no, sir.

Q. How could you tell, what made you believe that the schooner was ashore at her stern?

A. Well, because she had an anchor down and it seemed to me that way. She was kind of headed on toward Wainaku, toward that Hilo mill and it seemed to me that her stern was fast on the sand there.

Q. How much could you see of her starboard side?

A. I could see her whole starboard side, fore and aft.

Q. Could you see anything of her bilges?

A. No, sir, couldn't see anything of her bilges.

Q. What was the motion of the schooner as she lay there?

A. I fancy the schooner was pounding up and down. I know when we got close to her there was one big breaker went right up on her.

Q. How far did those breakers extend?

A. They'd extend right in to the beach but they'd lose their headway.

Q. Did you see any breakers forward of the schooner?

A. Well, I saw, you couldn't call it a regular comber, but she was kind of capping up.

(Testimony of W. F. Thompson.)

Q. But at her stern were there any breakers?

A. At her stern it was still worse. [256]

Q. Could you in any way determine the depth of the water around the stern of the vessel?

A. There was no way for me to take soundings off her stern. There on the sand it would be probably seven or eight feet, probably less; I don't know the draught of the schooner. I think it's about that water there.

Q. How many lines were put on by the "Niihau"?

A. There's a six-inch line and seven-inch line.

Q. Describe what was done after they got the six-inch line on? How did the "Niihau" manoeuvre?

A. Got it on the same as the first time, then gradually they went ahead on the vessel and heaved it, tightened it.

Q. Did the "Halcyon" change her position from pointing toward Wainaku Mill at all?

A. After we had the lines on her?

Q. When was that second line, the seven-inch line put on, before or after she got headed around?

A. If I ain't mistaken, I think that seven-inch line was put on after she got outside the breakers.

Q. Then when the seven-inch line was put on, what did the "Niihau" do?

A. Heaved her taut the same as the other line and got an equal strain on both lines.

Q. Up to that time how did the "Niihau" pull?

A. She was working on her engines and heaving on the anchor chain at the same time.

(Testimony of W. F. Thompson.)

Q. In what way did the "Halcyon" come off? How did she move coming off?

A. Her bow swung up, come right up towards the "Niihau."

Q. Did she come with a rush or come slowly?

A. Just merely a gradual pull. To the best of my judgment, the vessel was aground.

Q. How did she come, fast or slow, by degrees, or how?

A. Well, sometimes her chains would be almost straight out.

Q. I'm asking you, putting your attention to the schooner "Halcyon" [257] and the lines, how did she move when she started coming off? Did she go right along continuously or did she go slowly?

A. She came slowly, slowly, slowly; she came slowly.

Q. How fast and how much at a time?

A. I couldn't tell you how fast.

Q. How long did the pulling continue before she left the beach?

A. How long had they been pulling? That I can't say. I never made no note of that.

Q. You have no recollection at all? A. No, sir.

Q. Would it be nearer one minute or nearer a half an hour or an hour?

Mr. RUSSELL.—It doesn't appear that she was pulling any length of time, pulling her off the beach.

The COURT.—He asked whether it was nearer a minute or half an hour.

(Testimony of W. F. Thompson.)

A. It must have been nearer an hour than half an hour pulling.

Q. Before he got her off?

A. Before he got her afloat. I can't say.

Q. Would it be nearer a minute than half an hour?

A. Nearer half an hour.

Q. Would it be nearer an hour than half an hour from the time the line was put on and the vessel came off? A. That would be nearer an hour.

The COURT.—No, after they commenced to pull.

Mr. WARREN.—After they commenced to pull which? Half an hour or an hour?

A. And before that schooner commenced to move?

Q. Yes.

A. I don't know. It probably would be half an hour before she started to move; I didn't keep no time. It would slip a man's memory, how long.

Q. Was that before or after her bow got around? [258]

A. That must have been after her bow got around.

Q. How long do you think it took before her bow got around before she started? How long had you been working then until she got straight around?

A. It might be probably pulling fifteen or twenty minutes on her before they got her out, heaving and pulling at the same time.

Q. When she was, as you say you believed her, stern ashore and her bow pointing toward Wainaku mill, did you take any note of her anchor chain; what direction that lead from the vessel? A. No, sir.

Q. You didn't notice that?



(Testimony of W. F. Thompson.)

A. No, sir, didn't notice that.

Q. Now, at the time your boat went with the line the second time when you went with the boat with the line, what kind of a sea was it?

A. It was blowing a heavy gale; heavy sea, dirty sea, running; heavy squalls at that time.

Q. Could you give your judgment as to the velocity of the wind?

A. I should judge the wind at this time would reach a maximum of forty miles an hour; the average would be about thirty-five or thirty-six miles an hour; that is my judgment.

Q. Was your boat at that time in any danger?

A. While we were there?

Q. While you were there, yes.      A. Yes.

Q. And why?

A. We were right in a heavy sea; if anything happened, we broke away or anything like that, or the boat capsized, there would be loss of life.

Q. How many men were with you in that boat?

A. I really don't know, but I had men enough, as I said before, to double bank the oars; some of the oars.

Q. Two, four, or six?

A. Oh, there was about eight or nine men. You see, five is our boat crew; this was extra heavy weather. [259]

Q. In your judgment, was the steamer "Niihau" in danger at any time?

A. Well, yes; more or less danger all the time.

Q. For what reasons?

(Testimony of W. F. Thompson.)

A. Might have gotten a line in his wheel, for one thing; his anchors might not hold. A good many.

Q. Did she have any steerage way at all during the operations until the boat began to come off? The "Niihau"?

A. You see, a vessel like that, when you're pulling on a vessel like that, you're heaved out ahead and you're heaving on your chains; there's quite a strain on them chains; you're moving slowly through the water; you've got a tow behind; you cannot hold your vessel right up to wind.

Q. Now, if an anchor chain should part under those conditions?

A. There'd be loss of one anchor and chain; that would leave us only one anchor to depend upon.

Q. And if the steamer should part both her anchor chains or one of them parted and the other dragged? A. Well—

Q. What would be the situation at that location where you were?

A. That way it would be serious; if she's towing her, and she's trying to pull that vessel off and you got the wind and sea on one side of her, she's got no headway, she's liable to blow ashore.

Q. What was the draught of the "Niihau"?

A. The "Niihau's" draught is, I think, eleven feet when loaded.

Q. And at that time?

A. At that time the "Niihau" only had a small amount; she was drawing about seven feet forward and about nine feet aft.

(Testimony of W. F. Thompson.)

Q. Do you really know?

A. That is just my judgment, I wouldn't swear to it.

Q. Judging from the position where the "Niihau" was at that time, do you know about how much water you had under you when you were heaving just before the vessel came off?

A. I supposed we had probably about where the "Niihau" was, I suppose [260] we had about eighteen feet; three fathoms; something like that. I didn't take any soundings.

Mr. WARREN.—Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. How soon after the "Halcyon" anchored, after the tow-line parted, was it that you went out there to make the soundings?

A. Sir?

Q. How soon after the "Halcyon" anchored after the tow-line parted was it that you went out there to make the soundings?

Mr. WARREN.—Oh, I object to that; there is no—

A. No, sir, I went to take soundings after they put the first line aboard of her then I went and took soundings.

The COURT.—Before her line parted?

A. Before her line parted, yes, sir.

Mr. RUSSELL.—Q. Was that after the tow began?

A. We ran the line aboard the vessel, the "Hal-

(Testimony of W. F. Thompson.)

cyon," and then they heaved her tight aboard the "Niihau"; then Captain Bruhn told me to go there and take soundings. I went and took a line and went with the boat's crew and we got in there with a surf-line and we took soundings.

Q. Could you tell at the time you arrived at the "Halcyon" and were making the soundings whether or not the boat was moving? You couldn't tell?

A. I couldn't tell.

Q. And you found from fifteen to eighteen feet of water around her?

A. I found, to the best of my judgment three fathoms forward and then about two and one-half aft.

Q. How far astern of the ship were you when you took the soundings?

A. I didn't go astern. I went in between the mizzenmast.

Q. How far from the stern were you?

A. You mean off the ship?

Q. Yes.

A. About two boat lengths, probably. [261]

Q. Just two of your boat-lengths?

A. Two of our boats.

Q. Now, you spoke about it being too dark to take any measurements from the piles and so forth. Do you recall whether you saw the piles?

A. No, I don't remember whether I saw them piles. It was too dark I couldn't make out anything; too dark for anything.

(Testimony of W. F. Thompson.)

Q. When you went out with the line to the "Halcyon," did you start before or after the distress signals were up?

A. When we was going towards the "Halcyon," then I seen the distress signals going up.

Q. You mean when you were in the steamer's boat? A. The steamer's boat with the line.

Q. And you had already—

A. Had the lines already.

Q. You had already gotten into the steamer's boat and you were on the way?

A. On the way to the "Halcyon."

Q. And how far had you gotten from the "Halcyon"?

A. Well, I don't suppose it was very far we got away; I couldn't say how far away; probably half-way, probably less.

Q. How many men were in that boat?

A. Well, I don't think we had. I think we had the same amount of men. I didn't count them.

Q. Eight or nine?

A. We had a big crew in the boat.

Q. You say you were in danger there. Of course, there is always more or less danger to a small boat in the water?

A. There was extreme danger according to the wind and sea.

Q. There is danger when passengers are taken from one of these steamers to some of these landings where there are no wharves? There's danger there, isn't there?

(Testimony of W. F. Thompson.)

A. Providing there's breakers around there, but smooth water there's hardly any danger.

Q. Were your soundings fairly correct that you made around that [262] "Halcyon"?

A. No, you couldn't judge on that on account of the motion of the boat and sea; I couldn't tell whether it was correct or not. To the best of my judgment, I would say it was three fathoms.

Q. Would you make any allowance from being concerned and worried about your own boat; wouldn't that make a difference?

A. I don't think it would.

Q. Weren't you afraid of yourself, danger to yourself?

A. No, it never entered my mind for a moment.

Q. So there wasn't so much danger but what you didn't think of your own safety, was there?

A. Well, there is danger of the boat going over, capsizing and filling up.

Q. At the same time there wasn't enough danger there to give you thought concerning your own life or your own safety when you were making the soundings?

A. Probably I did feel a little uncomfortable, but I don't know as I'd back out.

Q. Say if the boat had capsized, don't you think you could have swam ashore?

A. No, the trouble is I can't swim.

Q. Could the other men swim, do you know?

A. I guess so; they are all Japanese.

Q. Wouldn't the fact of your having a line be of



(Testimony of W. F. Thompson.)

some measure of assistance to you?

A. We kept her head to the sea.

Q. But in case of capsizing?

A. No. I had two oars already. I was going to jump for them.

Q. You were going to what?

A. If she commenced to capsize, I had two spare oars. I was going to jump for them. No use trying to grab any of your fellowmen, he'd only kick you off.

Q. Supposed you grabbed the line?

A. That wouldn't keep me above the water.

[263]

Q. The boat kept you up?

A. I'd get washed off a half a dozen times.

Q. You've had quite a little experience on the sea?

A. Yes.

Q. Quite a little experience on these boats?

A. Yes.

Q. You can handle one of those boats pretty well?

A. I can't say I'm strong enough to handle a steering-oar, but I could tell a man what to do.

Q. You know your business about handling these boats? A. Yes.

Q. Enough so that you don't feel afraid to go in one? A. Not afraid to go in one.

Q. A three or four foot sea isn't such a bad sea, is it? A. Three or four foot?

Q. Yes.

A. If it goes in rapidly it's kind of wicked.

Q. Now, you spoke about the "Niihau" being in

(Testimony of W. F. Thompson.)

danger. You said in case one of those anchors, anchor chains broke. Just what would have happened outside of the loss of the anchor?

A. There'd be only one anchor to depend upon. If she lost that we wouldn't give her the same pulling she had on the schooner. That chain is liable to snap too.

Q. Then what would have happened?

A. You'd probably lose your steerage way.

Q. Of course, that could be very easily remedied by cutting the towing-line? As far as safety to the "Niihau," in case she did lose her anchors or then if she didn't care anything more about the "Halcyon" but looked out for herself she could have cut the tow-line then she wouldn't be in the danger that was occasioned by the loss of the two anchors?

A. Less danger. The lines might get foul. [264]

Q. As a matter of fact, with her tow-lines cut, she'd be in less danger than with the tow; she'd be freer to steer out, wouldn't she?

A. Yes, but she'd have to let the tow go.

Q. There wasn't so much danger there at the time but what after the "Niihau" was able to get the "Halcyon" straightened out, after she was on the beach as you say, with the six-inch line, but that she sent another line, an additional line after the hardest work was over?

A. I know we sent a seven-inch line besides the six-inch line to the "Halcyon."

Q. Well, there couldn't have been, the situation couldn't have been regarded as so very severe and

(Testimony of W. F. Thompson.)

so very dangerous with regard to sending lines over there to her when it was demonstrated that the boat could go safely with a six-inch line and then they got to work to send a seven-inch line?

Mr. WARREN.—I object to the question as argumentation.

Q. The situation at the time could not have been regarded as so serious with respect to danger in sending a steamer's boat with a line when the boat, when the "Halcyon" had had one line sent to her and got her straightened and then they send on a seven-inch line? Wouldn't the very fact that they sent an additional line indicate to you that the situation could not have been regarded so very serious with respect to danger?

The COURT.—Danger, not to the "Halcyon"?

Q. No, danger to the boat, the crew of the "Nii-hau" to take a line to the "Halcyon"?

A. It was just as dangerous as the first time. Practically more so as wind and sea was increasing before they took that line.

Q. Weren't you people regarding the safety of yourselves at all?

A. Yes, but we seen the other vessel in distress.

Q. Why didn't you try to take the "Halcyon" off with the less amount of danger to yourself by continuing to tow her with [265] the six-inch line?

A. Probably Captain Bruhn thought he had a seven-inch. He thought he might have given that more safety.

Q. More safe to the "Halcyon"?

(Testimony of W. F. Thompson.)

A. More safe to the "Halcyon."

Q. And increasing the danger to portions of his own crew, is that your opinion?

Mr. RUSSELL.—That's all.

Redirect Examination.

Mr. WARREN.—Q. I want to be very clear. The soundings that were taken by you were when you went out the first time?

A. That was the first time. The first time when I went out; when they put the first line aboard. I took no soundings when the vessel was ashore.

Q. Now, as to height of seas, how high would you say these rollers or breakers were around the "Halcyon"?

A. I couldn't judge the first time, the morning when we went there.

Q. When you went the second time, you went in the boat with the line?

A. After the "Halcyon" hoisted up signals of distress?

Q. The seas at that time were about how high?

A. I couldn't give any judgment of that. I know they were running pretty fast.

The COURT.—When you were taking soundings, did you get into the breakers at all?

A. After we got into the breakers, I went as far aft as I possibly could and took soundings.

Q. Now, you say you can't steer?

A. No, sir, I can't steer.

Q. And your crew Japanese?

(Testimony of W. F. Thompson.)

A. Well, no; seemed I had one native there, a big, heavy fellow. He was boat steerer. The rest were Japanese.

Q. You wouldn't think there was any danger at the second time [266] you took a line if everybody could swim, including yourself, even though the boat did capsize?

A. I think, your Honor, it would take a pretty good man to swim through that sea running that way. There was danger of losing the boat, danger of men getting underneath the boat, getting hurt.

Q. On the first occasion when the line parted, when you were towing the "Halcyon" and the line parted, how far was the "Halcyon" towed before the line parted?

A. Oh, before the line parted, to the best of my judgment, the "Halcyon" was towed almost to the end of the railroad wharf.

Q. The outside end?

A. The outside end of the railroad wharf, yes. That is where he dropped his anchor; that's pretty near safe anchorage out there.

Q. What was the tide, high tide or low tide?

A. I don't know the tide.

Q. Now, in regard to the seven-inch line which was taken to the "Halcyon" when she was aground on the beach near the boiler the Kilauea-Hou boiler. That was taken her after her bows were pulled round? A. After they were pulled around.

Q. Who took that second line?

(Testimony of W. F. Thompson.)

A. The boat's crew.

Q. You didn't go?

A. No, I came aboard then.

Q. And did they start pulling full speed after that line was fast? A. That I couldn't say.

Q. You don't regard there was any real danger to the "Niihau," do you, at any time with steam up?

A. I should think there was danger in there at night; there's danger of losing anchors.

Q. I mean danger to the hull, to the ship.

A. Something might happen to the engine.

Q. That's a danger that always exists.

Mr. RUSSELL.—That's all. [267]

Mr. WARREN.—Q. Is there any difference in that point of danger of the engines breaking down between ordinary operations and where the engines are being operated under circumstances such as these? Is there any greater difficulty or requirement made upon the engines?

A. The greater difficulty made upon the engines in a case like this, yes. You want to use every pound of steam you've got; more strain put on and everything else.

Mr. RUSSELL.—Q. Did I understand you to say, Mr. Thompson, that the seven-inch line was put aboard the "Halcyon" after you got her off the beach?

The COURT.—No, after the bows were swung around.

A. After we hove taut on the six-inch line.



**Testimony of W. C. Bruhn, for Libellant.**

Direct examination of W. C. Bruhn, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Captain Bruhn, you are master of the Inter-Island steamer “Niihau”?

A. Yes, sir.

Q. And you were in the month of January, 1914, when the “Halcyon” got in trouble in Hilo Bay?

A. Yes, sir.

Q. Now, what was the first knowledge or information which you had that the “Halcyon” wanted assistance?

A. From Purser Moreton. He came off and informed me that there was a schooner ashore at the mouth of Waiakea River and wanted assistance.

Q. What did you do?

A. I started over immediately.

Q. At that time where was the “Niihau”?

A. The “Niihau” was lying out in Hilo Bay.

Q. And what did you do?

A. We informed the engineers to get ready which they said they were all ready, and heaved up anchors and steamed over towards the Hilo railroad wharf; between the end of the Hilo railroad wharf, we dropped both anchors with about [268] ninety fathoms of chain each and then let her drift down towards the schooner as near as I thought it was safe.

Q. Now, in drifting down toward the schooner,

(Testimony of W. C. Bruhn.)

where did the "Niihau" pass, on which side of the buoys by the wharf?

A. This side of the wharf the side she passed, sir.

Q. What buoys?

A. We anchored in between the buoy of the end of the wharf; that's No. 3 buoy counting the buoys from shore.

Q. Counting the buoys from shore?

A. It would be No. 3 buoy counting the buoys from shore. Between that buoy and the railroad wharf we dropped our anchor.

Q. I'll ask you, Captain, if you'll make a sketch here of the wharf and the buoys and the place where the "Niihau" dropped her anchors. In drawing this map I want to ask you also to locate the later positions of the "Halcyon."

A. (Witness draws.)

Q. We'll mark this wharf as wharf, railroad wharf. The buoys, the forward one you call No. 1.

A. Count them from the shore.

Q. From shore, No. 1. The next one, No. 2. And the next one, No. 3. Now, you've made a little mark here toward the railroad wharf. What is that?

A. The old warehouse down there.

Q. What do they call it?

A. We used to call it the old boat landing; then again they call it the old Hackfeld warehouse.

Q. Then we'll mark that as old Hackfeld wharf or warehouse? A. Warehouse.

Q. Where is Waiakea River?

(Testimony of W. C. Bruhn.)

A. This is the Waiakea River here. These are the piles here.

Q. Mark these piles. Now, will you locate the place where the "Niihau" dropped her anchors for the purpose of backing in toward the schooner. Just mark a little, two crosses indicating her anchors. A. (Witness marks two crosses.) [269]

A. That is one cross for each anchor.

Q. When the chain had been paid out, where was the "Niihau"?

A. The "Niihau" was about off here.

Q. Will you put a little arrow to indicate which is the bow of the "Niihau"?

A. (Witness marks.)

Q. And connect that bow with the two anchors?

A. (Witness marks.)

Q. What was the length of your line from the "Niihau" to the schooner. First, can you locate the schooner? Could you see her at that time of the night? A. Yes, sir.

Q. Did she have any lights? A. No lights.

Q. No lights in the cabin? A. No, no lights.

Q. Do you know where she was?

A. She was about this way. Here is the end of the railroad wharf here and she was about in this direction here.

Q. Will you put an arrow there to indicate her bow? A. (Witness marks.)

Q. Now, going back, we will mark the "Niihau" with the word "Niihau" and the "Halcyon" with the

(Testimony of W. C. Bruhn.)

word "Halcyon." How then was your line sent to the "Halcyon"?

A. We coiled the hawser in the boat and then bent another line on to that and then paid out then the boat pulled over to the "Halcyon" and passed the first line aboard.

Q. Did that line pass on the inside or outside of buoy No. 1? A. No, passed on the outside.

Q. Then is your location of the "Halcyon" about correct?

A. Well, of course, the way this is here, the "Halcyon" might have been a little further down.

Q. A little further down toward the piles?

A. Yes, towards the piles, but the line come through here.

Q. Just on the Hilo side of buoy No. 1?

A. On the Hilo side, yes, of buoy No. 1.

Q. Shore side rather?

A. Well, that's the Hilo side. [270]

Q. What size line was it? A. Six-inch line.

Q. And new or old? A. New.

Q. What length? A. One coil, 120 fathoms.

Q. And do you know how much of it was used in making fast on board the "Niihau" after you had hauled it in and got the end of the six-inch line in? How much did you use in making it fast on the "Niihau"?

A. On the "Niihau," I should say somewhere around between twenty to twenty-five fathoms.

Q. After the six-inch line had been hauled taut

(Testimony of W. C. Bruhn.)

between the two vessels, what, in your judgment, was the distances between the two vessels with your line taut as you were pulling?

A. That means the line that was fastened on the "Halcyon"? Just the distance between the "Halcyon" and the stern of the "Niihau"?

Q. And allowing for any part of the coil on board either vessel.

A. I should judge between sixty and sixty-five fathom. That is, from the end of the stern chock to this vessel's bow chock.

Q. Now, were any soundings taken as to the water around the "Halcyon" in the position as shown on this sketch?

A. Yes, sir; sent the second mate and the boat's crew over there with a lead line to take soundings around the "Halcyon."

Q. Now, was that before or after you had gotten the six-inch line aboard the "Niihau"?

A. That was after.

Q. How soon after?

A. Oh, just about twenty or twenty-five minutes; something like that. By the time they got back and got in down there, I should judge about twenty or twenty-five minutes.

Q. How long a time did the "Niihau" pull on the "Halcyon" before the line parted?

A. That was just about daylight. I should judge that was somewhere around a little after six.

Q. How many hours or minutes had you been pulling before the line parted?

(Testimony of W. C. Bruhn.)

A. We had been pulling then in the neighborhood of forty-five minutes; forty or forty-five minutes; [271] something like that.

Q. Now, the "Halcyon" is marked on this sketch which we will mark position No. 1. Will you now mark the position of the "Halcyon" at the time the line parted?

A. When our line parted, the tow-line? (Witness marks.)

Q. That is where the "Halcyon" dropped anchor?

A. Yes.

Q. We'll mark that "Halcyon" No. 2. Where was the "Niihau" at that time? A. (Witness marks.)

Q. We'll mark the former position of the "Niihau" as No. 1 and this second position you have just given as No. 2. That was the time the line parted. What did the "Halcyon" then do?

A. Dropped her anchor.

Q. Do you know what parted that line? Do you know yourself? A. No. That parted—

Mr. RUSSELL.—Just a moment.

Mr. WARREN.—Did you say anything to the master of the "Halcyon" about the line?

A. I hollered. I don't know if I'm allowed to use the word in court which I said.

The COURT.—Yes. What did you say?

A. I said to him, "What in hell did you cut my line for?"

Q. Did you see him?

A. I hollered to the captain from the after deck



(Testimony of W. C. Bruhn.)

of the "Niihau"; anyhow to the man that was there. I couldn't tell the captain from anyone else.

Q. Could you hear any answer from him?

A. No.

Q. Could you hear if there had been any reply?

A. No.

Q. Were you observing the "Halcyon" at the time the line parted, and did you see anyone on board make any signals? A. No.

Q. Do you know where the captain was on the "Halcyon"? A. No. [272]

Q. Or anybody that you took to be the captain?

A. Nobody on the fo'c's'le excepting this man that threw his arms out.

Q. When did he do that?

A. Just about when the line parted.

Q. How did he throw his arms out?

A. Throw them out like that. (Indicating by raising arms parallel to the floor then dropping them down.)

Q. Was that a kind of a signal, a customary signal? What would you take that signal to mean?

A. That is generally used as a signal.

Q. What's that signal for?

A. Maybe, in case we have anything, for us to let go; otherwise to let go an anchor or anything like that; used for both purposes.

Q. Where was that man standing on the "Halcyon"? A. On the fo'c's'le-head, sir.

Q. Did you make any signal in reply?

(Testimony of W. C. Bruhn.)

Mr. RUSSELL.—I object to that as it doesn't appear that the signal was made to him or meant for him.

Mr. WARREN.—Withdraw the question. Did you make any signal to the "Halcyon"?

A. No.

Q. What did the "Halcyon" do immediately upon the line being parted or let go?

A. Dropped her anchor.

Q. What did you do? A. Dropped my anchors.

Q. Did you drop right where you were, or did you go ahead?

A. Dropped right where we were because as soon as the line parted the engines were stopped and as soon as he dropped, we almost dropped our anchor at the same time; pretty near the same time.

Q. How many anchors did you drop?

A. We dropped one anchor at that time.

Q. The "Halcyon" was in the position you have marked number 2? A. Yes.

Q. And the "Niihau" at No. 2? A. Yes, sir.  
[273]

Q. Did you pay any attention to the "Halcyon" after that?

A. Yes. Standing and looking at her.

Q. What did you observe?

A. Well, after a while I saw her dragging in shore.

Q. How long after the line had parted and she dragged anchor was it that you saw her dragging?

A. About fifteen or twenty minutes.

(Testimony of W. C. Bruhn.)

Q. Could you determine then whether she was dragging or just what she was doing?

A. Yes, I noticed that she was dragging absolutely then and we started to get our line ready again to run to her.

Recess.

Mr. WARREN.—With the Court's *permiss*, I would like to withdraw Captain Bruhn so that Captain Mosher can go on and be relieved this afternoon. He is anticipating some work to-morrow and wants to get through.

**Testimony of F. Mosher, for Libellant.**

Direct examination of F. MOSHER, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Captain Mosher, you are the pilot of this Hilo harbor? A. Yes, sir.

Q. And also harbor-master? A. Yes, sir.

Q. And was pilot and harbor-master January, 1914? A. Yes.

Q. At the time the schooner "Halcyon" was in trouble in Hilo Bay? A. Yes.

Q. Did you observe the schooner on the morning that she was in trouble? A. Yes, sir.

Q. When did you first notice her?

A. I think it was about seven o'clock that I first took notice of her first. [274]

Q. Where were you then? A. Home.

Q. And where was the schooner?

A. It appeared to me to be halfway down the line of the wharf where she was lying. I should say six

(Testimony of F. Mosher.)

hundred feet inside the end of the wharf.

Q. How far from the mouth of Waiakea River?

A. I should think about five hundred feet.

Q. At that time, what did you observe?

A. I observed that she was dragging her anchor slowly, and as soon as I seen that I went on down to the wharf.

Q. Where did you go?

A. I went down to the old railroad wharf.

Q. Sometimes called the old Hackfeld wharf?

A. Yes, old Hackfeld wharf.

Q. And what time did you get there?

A. About eight o'clock.

Q. You went right down from the house?

A. Yes.

Q. Where was she then?

A. In about the same place.

Q. And how long did you observe her from that position?

A. Oh, I think probably fifteen or twenty minutes.

Q. Did she change position?

A. She dragged a little; she was ranging back and forwards but she altered her position and went a little towards the beach.

Q. In what direction was she drifting or dragging?

A. She was dragging in about south. She was heading at about north.

Q. What was causing her to drag?

A. Well, wind and stress of weather; heavy sea.

Q. What kind of weather was it?

A. Pretty nasty weather; what I would call very

(Testimony of F. Mosher.)

nasty weather; [275] blowing strong.

Q. What kind of sea? A. Heavy sea.

Q. Any breakers?

A. The breakers were inside of her at that time.

Q. What would you judge would be the velocity of the wind at that time?

A. That's pretty hard to say. I should think it was blowing all of forty miles an hour and probably more.

Q. You observed from there for a time and then where did you go?

A. About that time she ran up her two signals N-C. I was waiting for those. As soon as I seen those two signals I went over to the boat-house and got into a boat. When I seen those signals it was somewhere around eight thirty-five.

Q. Did you note that time with anybody else?

A. I noted that time with the man who was tending bar at the Waiakea saloon at that time.

Q. And you really went to your office first?

A. No, I didn't go to the office; my office was situated in part of the Waiakea saloon building at that time.

Q. The flags were up before you left in the boat?

A. Yes.

Q. And you went out to the vessel? A. Yes.

Q. And how long did it take to get out?

A. Probably five or six minutes; it is only about three or four hundred yards.

Q. When you got out of the mouth of the Waiakea River there where you could observe the "Haleyon,"

(Testimony of F. Mosher.)

could you see then whether or not she had any lines on her?

A. No, I couldn't see very well. I was right astern of her; I couldn't say whether there was a line on her or not.

Q. You mean her stern was toward Waiakea River? A. Yes. [276]

Q. And her bow was away from it? A. Yes.

Q. And her bow heading toward what place?

A. Pointing out north, about somewhere about Papaikou mill or Paukau; she wasn't heading exactly straight out due north and south.

Q. When you got to her did you then observe whether there were any lines on her from the "Niihau"?

A. I was about ten or fifteen minutes before I got to her, got alongside of her. There was a line on her then.

Q. Prior to that you didn't notice? A. No.

Q. Did you observe a small boat moving between the "Niihau" and the "Halcyon" at that time?

A. No.

Q. So that as far as you personally are concerned, you didn't know whether those signals, whether the flags were put up before or after the line was put on, do you? A. No, I couldn't say.

Q. When did you first begin to note the operations of the "Niihau"? After you were on board?

A. After I was on board.

Q. At that time what sort of a line did they have on? A. I think it was a six-inch line.



(Testimony of F. Mosher.)

Q. Now, at that time, what was the position of the schooner as respects the beach?

A. Well, when I got aboard of her the first words I spoke to the captain, asked him how much chain he had out; he said, "I've got all my chain out"; I went forward on the fo'c's'le-head. I seen the line was fast and she was on the beach. I felt her distinctly; I told the captain she's touching the beach.

Q. Was there anything else that enabled you to determine?

A. Nothing more than the shock, that distinct shock.

Q. And did you observe, going back. You were observing from [277] the old Hackfeld wharf, what her angle was; in other words, what direction was the "Halcyon" pointing as she was going backwards?

A. I couldn't tell that after the time I left the Hackfeld wharf and got into the boat.

Q. I mean before you left the Hackfeld wharf while you were observing her there, was her movement, direction different?      A. No.

Q. After that when you were out with the small boat, was that position the same?

A. No, it had altered; she had swung a little towards the land more and was heading probably north.

Q. And approximately how many points to the beach?

A. The beach line runs about north and south; probably she was running about three points inside

(Testimony of F. Mosher.)

the beach; the north line would take her to the Pee-peekeo light.

Q. When you went forward and observed her anchors, what direction were her anchors leading from the bow? A. Right straight ahead.

Q. Toward the "Niihau"?

A. The "Niihau" was anchored right straight ahead of her.

Q. Then when the vessel changed position, was there any difference, as you say, the bow swung; did that make any difference with her anchor chains?

A. They swung off to the starboard side, naturally.

Q. Now, at the time you got on board what was the situation with regard to the handling of the six-inch line? What were they doing with it at that time?

A. The six-inch line was fast to the mast when I got aboard.

Q. What were they doing, heaving or pulling?

A. They were not doing anything; they were standing around there.

Q. What was the "Niihau" doing?

A. That I don't know what she was doing. She was too far away from me. [278]

Q. When you got on, she was heading, as you say, farther over. Now, how long was it before her bow got around straight again, pointing toward the "Niihau"?

A. Well, she had forty-five fathoms of chain cut and I think that's all; she had an old-fashioned wind-

(Testimony of F. Mosher.)

lass. I think it takes twenty-five minutes to heave one chain. As soon as they heaved it through, she come around again.

Q. During that time was the "Niihau" doing anything with her line? A. No.

Q. As far as you could observe?

A. As far as I know. The line was taut.

Q. You don't know whether she was steaming or what?

A. I don't think she was steaming because I would have seen the swash of the water from the propeller.

Q. That line continued taut? A. Yes.

Q. At what time did they put on the seven-inch line, before or after she got around.

A. Before what?

Q. The "Niihau" put on the seven-inch line, was that before or after she got her bow around, the "Halcyon"?

A. I don't recollect of any seven-inch line going on.

Q. You only recall a six-inch line?

A. The six-inch line was already there when we went aboard. After the vessel got safe there was another line came on board there. Then the "Niihau" commenced to tow.

Q. You think she was free of the beach before they got the seven-inch line aboard?

A. Yes. I say I didn't feel her touch any more.

Q. Then, in your judgment, would her anchor and chain as she held them then, have held her without the line from the "Niihau"? A. No. [279]

Q. Why not?

(Testimony of F. Mosher.)

A. Because the plain truth was she dragged in from where I seen her and the reason she didn't drag any further was because her stern was on the beach. The anchor was simply no good to her.

Q. From her action there and the dragging which you observed, could you have determined what position she would have *have* been in?

A. I should think if the "Niihau" hadn't had any line on that vessel, and her stern in the position it was, within a few minutes she would have swung around broadside to the beach because her anchor wasn't doing any good to her at all.

Q. When a vessel goes broadside on the beach is there, in your judgment, is it a very difficult operation to get her off?

A. Oh, yes. You've got to pull the whole length of the vessel against the sea to get her off.

Q. Will you briefly state your experience in following the sea? How long?

A. I've been to sea since I was seven years old. I'm sixty now.

Mr. RUSSELL.—I'll state that the captain is qualified to answer any question touching an opinion as to seamanship or navigation.

Q. Would I understand you that the "Niihau" began her towing of the vessel after she got the second line on?

A. That's what I think she did. I couldn't tell, but the "Halcyon" commenced to go through the water after the second line was put on. It must have been towing.

(Testimony of F. Mosher.)

Q. How far out did the "Niihau" take the "Halcyon" when they began towing?

A. Towed her out, I should think, about a thousand feet outside the end of the Inter-island wharf.

Q. And then what occurred?

A. We dropped the anchor.

Q. On board the schooner?

A. On board the schooner.

Q. Was any message of any kind sent to the steamer after stopping towing? [280]

A. His anchor was dropped and we sent out the full length of chain. I seen it wasn't holding. I asked him what he proposed to do. He asked me what I thought about it. I said, "Your anchor won't hold you in this gale where you are." He and myself got into the small boat and went over to ask Captain Bruhn if he would stand by until the weather abated; Captain Bruhn said, "All right," and he done so.

Q. And how long did the "Niihau" stand by? Till the morning?

A. I think she was there from about ten or nine or ten until some time in the same evening. I'm not certain of it. I don't know when she did let go.

Q. She might have held on all the succeeding night as far as you know?

A. As far as I know. She hadn't hold of her in the morning.

Q. Will you describe the weather conditions there outside and around the "Halcyon"?

(Testimony of F. Mosher.)

A. Just common sea breakers like what breaks up on the beach. They broke in pretty heavy sometimes; fell in six or eight feet and sometimes higher.

Q. How high?

A. I should say about six feet high.

Q. How would the size of those compare with ordinary breakers?

A. You've got to have a heavy gale to make any breaker on the beach at all.

Q. Now, was the schooner anywhere near the breakers at that place?

A. She was right in the breakers; her stern was in the breakers at that time. When I went to get alongside of her the boat was down eight or nine feet from the rail one moment and the next moment we were about even with the rail.

Q. Have you anything to base an opinion upon as to how deep the water was at her stern?

A. I know what depth of water is there at medium tide. There was about seven feet aft, and where her bow was, about eighteen feet; measuring off the distance of the "Halcyon," I think she is about 146 feet, you get about 18 feet of water. [281]

Q. When you went over with the captain of the schooner, Captain Olson, to ask Captain Bruhn if he would hold on, did you hear any conversation between Captain Bruhn and Captain Olson as to the line having parted or been cut? A. No, sir.

Q. Do you recall anything of that kind being said?

A. No, sir.



(Testimony of F. Moshèr.)

Q. There may have been something said?

A. There might have been. I didn't hear it.

Cross-examination.

Mr. RUSSELL.—Q. Captain, you say the vessel was ranging back and forward on its anchor chain?

A. Yes.

Q. And did that continue at the time that you thought she was touching? A. No.

Q. Well, now, you say that you thought, you concluded that she was on the beach because you felt a pounding? A. Yes.

Q. And was that a violent pound?

A. What do you mean by violent?

Q. Would it indicate that she was very much on the beach?

A. It indicated to me very forcibly that the vessel's stern was being lifted and pounded on the beach.

Q. You say the bottom goes down rather rapidly there? A. It goes down rather sloping, yes.

Q. Would you say there was very much of that vessel on the beach when she pounded?

A. I shouldn't say there was very much of it on; she was more against the beach than anything else.

Q. The abruptness of that slope made it, of course, easier to tow the vessel off from it?

A. I couldn't say that.

Q. What's that?

A. I couldn't say that, whether it made it any easier or not. [282]

(Testimony of F. Mosher.)

Q. Of course, it would mean there was less of her to pull off?

A. Yes, sir, I think she would come off a little easier than if she had been half of her length on, probably.

Q. You say that were it not for the line from the "Niihau" she would have grounded broadside on the beach?

A. I think that would have been the natural consequence.

Q. What would have followed after that?

A. That's hard to say because the "Halcyon" is a very old vessel. I don't think she would have stayed there very long without something serious happening; he would have broken up.

Q. The beach there is sand?

A. Yes, of course, in keeling over, she would have keeled over broadside, full length on the beach and the sea would have pounded on her bottom.

Q. What is your best opinion, considering the weather as it was the following day as to how long she would have lasted?

A. That's pretty hard to say. The vessel was partly loaded with lumber; naturally that lumber would have gone over. These seas lifting that vessel, I don't think she would have lasted very long.

Q. Do you think she would have lasted throughout that day?

A. No, I do not; not without some part of her breaking.

Q. You say with that abrupt slope, if she had

(Testimony of F. Mosher.)

thrown over, you think that the lumber would have fallen out of her?     A. Not until she broke up.

Q. Of course, she wouldn't have broken up as rapidly as she would if that had been a rocky shore?

A. No, I can't say as she would have if it had been a rocky shore; she might have gone in between the rocks and been immovable. I couldn't say whether she would break up quicker on a rocky beach.

Q. Would the fact of her having an anchor make any difference with regard to the likelihood of her breaking up?     A. No.

Q. It would not make any difference at all?

A. No. [283]

Q. Captain, what from your familiarity with the sea and conditions just at that time, what *would from* the lumber falling into the sea? Would it have washed ashore?

A. Well, it would wash ashore and wash back again the same as anything else washes back with the inflow and outflow of the surf.

Q. And as the sea would subside eventually it would have drifted toward the shore?

A. It would have drifted, if it had followed the current, it would have drifted toward the foot of Wainuenue Street; that's my experience with the current. How much of it would have drifted there, it's pretty hard to say.

Q. Do you believe that if the lumber had gone overboard after the ship had broken up, that with men employed there to haul in what they could, that

(Testimony of F. Mosher.)

a substantial part of that lumber could have been saved?

Mr. WARREN.—I don't think that's within the range of cross-examination.

A. Very little of it.

Mr. RUSSELL.—I will withdraw the question. That is all.

# Redirect Examination.

Mr. WARREN.—Q. You just made a mention of current; current from which river did you mean, or had the Wainaku River anything to do with that current?

A. I don't think it does. This bay is made in a crescent shape; she was on this horn; she would naturally run in this way.

Q. The flotsam and jetsam in the water, where does—

A. Beaches out here at the foot of Wainuenue Street. After a storm you can go down there and see the beach for probably a thousand feet all piled up with debris.

Mr. WARREN.—That's all.

The COURT.—What was it that held the bows of the "Halcyon" around toward the sea?

A. The "Niihau's" line.

Q. Was the "Niihau's" line aboard before you got there? A. It was, yes. [284]

Q. Were they hauling on it?

A. I don't know what they were doing with the "Niihau." The first thing I done was to commence to heave in chain; as I heaved, I suppose the "Nii-

(Testimony of F. Mosher.)

hau'' heaved on hers.

Q. By you heaving on the chain could you pull the bows around?

A. I don't think so; our anchor was going right through the sand. I don't think it was doing any good.

Q. What prevented the bows from swinging around on the beach before you got there?

A. That I can't say unless it was the "Niihau's" line. When I went aboard her she was swung around this way. I put my hand on the anchor chain this way and I told the captain, "Your anchor is dragging." I suppose the combined strain on that anchor and the "Niihau's" line kept it from going on.

Q. When you went aboard where did you climb over the rail?     A. Aside the mizzen rigging.

Q. Which rail?     A. The starboard rail.

Q. You went on the windward side?

A. I couldn't get around to leeward underneath her stern, she was so close to the beach I couldn't get underneath her stern.

Q. That is the first you saw of her trouble when she was on this beach? You didn't see anything about the affair of the early morning?

Mr. WARREN.—Q. You just said, Captain, she was so close to the beach you couldn't get behind her. How far was she from the beach?

A. I didn't think it was safe to go around her stern; I would have been right in the surf if I had gone under her stern.

(Testimony of F. Mosher.)

Q. Could you give any estimate at all of that distance, approximately; not exactly?

A. I should think from where the breakers stopped; that is, before they run up the beach and to her stern, it wasn't over a hundred and fifty feet.

Q. Not over that?

A. I don't think it was over that.

Q. How far was that, more or less, from that black boiler on the beach, the old Kilauea-Hou boiler?  
[285]

A. A little on the port quarter down towards the lighthouse.

Q. On the lighthouse side?

A. On the Hilo side.

Mr. RUSSELL.—I omitted to ask you when you first saw the distress signals, did you see the "Nii-hau" there?     A. Yes.

Q. And did you see one of the steamer's boats anywhere around?     A. No.

Q. And can you say definitely as to whether or not at the time she had the distress signals up there was any boat on its way to her?

A. I can't say for certain.

Mr. RUSSELL.—That's all.

The COURT.—Captain, you said something about the beach shelving gradually to about eighteen feet?

A. Yes.

Q. If her stern was against this shallower part, near the edge of it, it would be quite a different thing pulling her off than if she was further back?

A. Yes.



(Testimony of F. Mosher.)

Q. That is, if there was a slope?

A. I understand.

Q. It would be quite different? A. Yes.

Q. Can you say where that slope began?

A. I think. You must understand me. It runs very gradually. I think her bow was in about seventeen or eighteen feet of water, and if there hadn't been any sea where her stern was, she'd have been in about eight or nine, maybe ten, feet of water. It was pretty hard to tell the depth of water when she's jumping up and down.

Q. From the shore, the slope of the sea bottom is pretty even?

A. Very even, yes; runs down pretty gradual slope, but pretty steep.

Q. If we assume that the "Halcyon" was drawing twelve feet of water [286] would that assumption aid you in determining the depth of water either forward or aft?

A. No, you couldn't tell anything about what she was drawing then with that sea on.

The COURT.—You've been here a long time. The current of the Wainaku runs and swings on shore and goes back?

A. Yes.

Q. Does that, according to the time of year or condition of tides or anything, does it change the sea bottom so *that* is shallow a month later would be deeper? A. I don't think so.

Q. If you will look at that chart, you'll see the four-foot and the two-foot line is very crooked. Do

(Testimony of F. Mosher.)

you suppose that irregular depth is permanent?

A. I don't go much on that chart; those soundings. Now, the only thing that I have found out, the current sets out there in a straight course to about the end of the Inter-Island wharf then it goes towards Cocoanut Island and some goes towards Hilo; but I haven't found in taking vessels there where it's made any deposits or changed it materially.

Q. The Wailou River that runs out at Cocoanut Island?

A. That runs out to the reef and strikes the reef and goes back to Cocoanut Island; that runs to where the German vessel is lying now.

Q. The current of the Wailuku River, has that been changed at all by the wharf?

A. I don't think so. I don't know what it was. There has been no change since I've been here.

Mr. WARREN.—That's been how long?

A. Six years and four months.

**Testimony of Captain Bruhn, for Libellant  
(Recalled).**

Continuing direct examination of CAPTAIN BRUHN. [287]

(Capt. Bruhn resumes the stand.)

Mr. WARREN.—Q. Can you recall, Captain, about what time of the morning it was that you first observed the "Halcyon" appearing to drag her anchors after you had towed her out and she had dropped anchor and you had dropped yours?

A. Well, that was somewhere around seven

(Testimony of Capt. Bruhn.)

o'clock, I think; somewhere around seven o'clock.

Q. And what preparations did you make?

A. I started right in to get our line ready and watching the vessel at the same time.

Q. Now, in watching her, could you determine certainly whether she was drifting or not?

A. When I commenced to notice after that that she was dragging more or less especially when this heavy, now and then the sea is little larger; when some of those big fellows come in you could see her dragging in.

Q. How long did you observe her doing that before you moved the "Niihau"?

A. Well, I should say about fifteen or twenty minutes we was watching her.

Q. Then you did what?

A. Hove up and dropped our anchor on the Hilo side of that first buoy off the wharf there little on the outside or between the two buoys.

Q. Can you now go back to this change, Captain, that you were making before, and mark the position that "Niihau" took the third time; that is, when you had picked up your anchors and moved around and dropped them again? A. Yes.

Q. You were lying here at "Niihau No. 2" on this sketch when you observed her dragging and then you picked up and went where?

A. Went in about the position where the schooner is now.

Q. That would be "Halcyon—2"?

A. "Halcyon—2" yes.

(Testimony of Capt. Bruhn.)

Q. And you dropped anchor?

A. Dropped two anchors there.

Q. How much chain?

A. Ninety fathoms on each anchor. [288]

Q. Then, at that time where was the "Halcyon"?

A. The "Halcyon" was drifting.

Q. Now, will you locate the approximate position of the "Halcyon" at the time you dropped your anchors at the point "Halcyon—2"?

A. Now, this is the river here.

Q. You are now drawing the beach line?

A. Draw along here to show the beach line. The "Halcyon" drifted down in this direction, a straight line; that's her anchors. And with the wind and one thing and another she dragged in a straight line for the beach.

Q. About where were you when you dropped your anchors at "Halcyon—2"? A. She was going in.

Q. "Halcyon—2" was the place you dropped your anchor? A. That is where I dropped.

Q. When you dragged up at the end of your ninety fathoms where was the "Niihau"?

A. The "Niihau" comes pretty well down here; about here.

Q. Just make a mark here to indicate the "Niihau." A. A cross?

Q. Same as before, a line with an arrow at the head of it. A. (Witness marks.)

Q. Mark that "Niihau No. 3."

A. (Witness marks.)

Q. And the "Halcyon" was then?

(Testimony of Capt. Bruhn.)

A. The "Haleyon" was about in this direction.

Q. And in approximately that location?

A. Approximately that location.

Mr. WARREN.—The witness marks a point we will call "Haleyon No. 3."

Q. When you dropped your anchors and brought up with the "Niihau" in the position No. 3, what did you do?

A. Then we coiled the line in the boat and the crew in and asked [289] them if they was willing to go; told the second mate to go with them; Mr. Thompson. He says that the crew wouldn't go and he wouldn't go.

Mr. RUSSELL.—That's objected to.

A. Your Honor, Mr. Russell said the "Niihau" wasn't in danger and the boat's crew wasn't in danger. Now, I claim the "Niihau" boat's crew was in more danger than the schooner's crew was.

The COURT.—Yes, that's really not the point. I will sustain the objection.

A. I'd like to see Mr. Russell in that boat.

Mr. WARREN.—What preparations, Captain, and conditions. Under what conditions did the crew of the "Niihau" go in that boat with the line?

Mr. RUSSELL.—That is objected to as being indefinite and vague; calls for the conclusion of the witness.

The COURT.—It is a very vague question.

Mr. WARREN.—Withdraw it. Captain, did any of the men on the steamer "Niihau" decline to go in that boat when asked to do so?

(Testimony of Capt. Bruhn.)

Mr. RUSSELL.—That is objected to upon the ground it is immaterial; not binding upon the respondent; and irrelevant, not being evidence as to the conditions, or at most hearsay.

The COURT.—It is also a leading question.

Mr. RUSSELL.—Also for that, too.

The COURT.—Sustain the objection.

Mr. WARREN.—Q. Captain, will you describe the conditions of wind and sea which were prevailing at the time you were preparing to send the small boat to the "Halcyon" with that line?

A. Yes. It was blowing a gale of wind.

Q. Blowing what? A. Blowing a gale of wind.

Q. About what velocity of wind, would you say?

A. A northerly direction; I should judge between forty and fifty miles. [290]

Q. And what about the sea?

A. The sea was pretty dirty sea.

Q. What was the size of the rollers, the breakers, if any?

A. Well, I should judge some of them they come around about six feet or so.

Q. Were there any breakers in the vicinity of the "Halcyon"?

A. Where the "Halcyon" was at this time here?

Q. When you were preparing to send that boat?

A. When we were preparing to send the boat she was just clearing.

Q. She was a little further back than position No. 3, is that right? A. This is "Halcyon No. 2."

Q. That's where you dropped your anchor?



(Testimony of Capt. Bruhn.)

A. Yes.

Q. And then the "Niihau" swung out paying out your chain until you got to "Niihau No. 3"? And at that time you say the "Halcyon" was at — No. 3. Was that approximately where the "Halcyon" was when you were getting ready to send your boat with the line?

A. When we were getting ready to send our boat with the line.

Q. Were there any breakers in her vicinity?

A. Yes.

Q. Did she go any further ashore?

A. She commenced to go; when our boat commenced to go she settled in gradual. Then I noticed her begin in swinging her bow towards town.

Q. Did you experience any difficulty aboard the "Niihau," Captain, in getting a crew to man that boat?

A. That is objected to as immaterial, irrelevant, not binding upon the respondents, calling for a conclusion of the witness.

The COURT.—It seems to me that it's outside of the case.

Mr. WARREN.—I wish merely to make myself very clear on the record on this point.

The COURT.—It's decidedly leading question, Mr. Warren. It's objected to as leading. [291]

Mr. RUSSELL.—Yes, I include that as one of my objections.

Mr. WARREN.—The purpose of these questions, your Honor, is manifestly to show conditions which

(Testimony of Capt. Bruhn.)

existed and the degree of risk which these men took, and the question of whether or not it was difficult to get men to go under the conditions which existed is certainly material on the question of the danger to the men who went.

The COURT.—It's too uncertain; the testimony is too uncertain to lead the Court to a conclusion.

Mr. WARREN.—When you asked the crew or ordered the crew to go in that boat, did they go immediately? A. Yes.

Q. What preparation, if any, was made with regard to handling that boat?

A. There was a surf-line attached to the boat.

Q. Why was that attached to the boat?

A. On account of wind and weather and sea.

Q. Did that surf-line have anything to do with whether or not that crew went?

Mr. RUSSELL.—That is objected to as immaterial and irrelevant.

The COURT.—Why did you have the surf-line?

A. The surf-line? On account of the wind and weather.

Q. You considered it made things easier?

A. No, because I considered that the way the second mate said they won't go without a surf-line, they couldn't get back to the ship. Therefore, they were given the surf-line so that we could lead them back.

The COURT.—That's not evidence.

Mr. RUSSELL.—I move that that portion of the captain's testimony in which he refers to what he

(Testimony of Capt. Bruhn.)

was told be stricken.

The COURT.—Motion is allowed.

Q. In your judgment, Captain, did the use of a surf-line as you have described in any way affect the degree of danger to [292] the men in the boat?

A. Yes.

Q. How and why?

A. Because they wouldn't be able after they got near the schooner there and got into that surf, these men wouldn't be able, against this wind and sea, to pull the boat out. That's the reason the surf-line was attached to her so we could hold her and heave her back.

Q. You had previously, when the "Halcyon" was in the position near the creek, sent a boat with a surf-line?

A. The first line? The second boat we had a surf-line.

Q. When was the second time? That is when the mate went to take soundings? A. Take soundings.

Q. Why was it put on then?

A. Sir? I cannot hear.

Q. Did you hear any request from the crew to take that surf-line?

Mr. RUSSELL.—That is objected to.

The COURT.—Sustain the objection.

Q. When the boat was sent with a line to the "Halcyon" at her position close to the beach the last time.

The COURT.—You mean when they took the seven-inch cable?

(Testimony of Capt. Bruhn.)

Q. No, when they took the six-inch line, were there any reasons other than those you have stated why you ordered the surf-line to be used.

Mr. RUSSELL.—That is objected to as immaterial, irrelevant, calling for the conclusion of the witness.

The COURT.—We'll hear the answer.

A. Was this supposed to be the first thing in the morning?

Q. No, this is the time they took the six-inch line. Any reasons other than those you've given why you ordered a surf-line to be used? A. Any reason?

Q. Besides those you have told us about the wind and the [293] weather and *dager*, were there any other reasons that had to do with your order to use the surf-line?

A. Yes, sir, to save the boat and also save the men that was in it in case anything should happen to them; to guard myself against the loss of boat, the boat getting swamped.

Q. Your experience in handling crews of the kind on the "Niihau" has been about how long? How long have you been handling steamers like the "Niihau" in these Islands?

A. In these Islands, between, must be about twenty odd years; about twenty-three years on Inter-Island boats.

Q. Have you on any previous occasions gotten into storms and vessels in distress?

A. Not many vessels, but we have been in a good many storms.

(Testimony of Capt. Bruhn.)

Q. And have you had to do before with sending boat's crews with lines?

A. Yes, sir, very often; very common around a number of the landings. If you went me to name the landings I'll name some very bad landings. Kilauea is one. That's very treacherous. Hanalei has a very nice landing, but in winter-time it is treacherous. There is another one I use surf-lines. There is another one in Kauai, Waimea; a very treacherous landings; we use the surf-line very often. Formerly when we had little boats and no wharf we used to handle the freight off the beach.

Q. Compare this occasion when you wanted to send the boat in there to the assistance of the vessel, compare it with others where you have thought it advisable to attach a surf-line. Will you say there is any difference in the degree of danger? A. Yes.

Q. Any great difference in the degree of danger to the men?

A. That's what I said, danger to the boat and also danger to the men if the surf-line had not been attached to the boat.

Q. Then, in your judgment, would it have been a prudent or seamanlike thing to do to have sent a boat in on this particular [294] occasion with that six-inch line to the "Haleyon" when she was nearest to the beach without a surf-line? A. No, sir.

Q. Would you have thought it a proper and seamanlike thing to do to ask a crew to assume the risk of going in without a surf-line? A. No.

Q. When you got the six-inch line on board that

(Testimony of Capt. Bruhn.)

had been sent in and put on board the "Halcyon" when she was in the neighborhood of position three, or rather, I will ask you, by the time you got the line to her, where was the "Halcyon"?

A. The "Halcyon" was in the direction here, she was dragging astern.

Q. Astern of position No. 3?

A. That's No. 3 here?

Q. Yes.

A. Well, she was dragging and as she was just about in the surf, I wouldn't say that she was ashore then, but the suction under her stern helped her. Then by that time our boat got pretty close up to the "Halcyon"; any man who knows how to throw a heaving-line could have thrown a heaving-line without any trouble.

Q. Go on.

A. But when they were getting ready to throw this line aboard her, the distress signal of the "Halcyon" went up about the same time our heaving-line was aboard of her just after the distress signal got up.

Q. When the "Halcyon" began to move, will you indicate in what direction she began to move.

The COURT.—He didn't say she began to move.

Mr. WARREN.—He said she was moving.

A. She was dragging and then come in and commenced to slue her bow; sluing her bow changed the position this way; changed over towards Hilo.

Q. Will you mark on the map there a line to indicate the way she was pointing when she had gotten



(Testimony of Capt. Bruhn.)

changed, as you say? A. If you want to get her—  
[295]

Q. That is, what way was she pointing? Put an arrow for her bow. A. (Witness marks.)

Q. Now, we'll mark that "Halcyon-4." At that time, what direction was her anchor chain leading from her, if you noticed that?

A. Her anchor chains were leading right up to northward in the same direction she dragged.

Q. Will you mark a little mark on that map to indicate the direction of her anchor line at that time?

A. (Witness marks.)

Q. Now, when that line was put on, when your six-inch line got on, what did you do?

A. Waited till they made a sort of a motion on the *sjp* that the line was fast.

Q. How long did that take?

A. Well, I should think that couldn't have been any more than about ten minutes or so.

Q. Then when you *go* a motion that you took to indicate that it was fast, what did you do?

A. Then we heaved away on the line.

Q. How?

A. On the windlass; steam winch forward that we use for our anchors and heaved up and got a strain on it and got both anchor chains on strain then *we* we began to swing the schooner.

The COURT.—With your anchor chains?

A. No, with these lines. Our anchor chains tightened up gradually when they came tight we heaved away slowly on the schooner, watching her as she rises

(Testimony of Capt. Bruhn.)

and falls; whenever our line would slack a little, we'd take in the slack till her bow kind of almost got into the same position as she is here (indicating).

Q. That is, back into line again?

A. Into line; the stern of the ship was right in the breakers.

Q. And when her bow got around approximately into line again, what did you do?

A. Stopped heaving and sent another line to the "Halcyon."

Q. How did you send that one? [296]

A. In the boat.

Q. Any different from the way you sent the six-inch line?

A. The same way we sent the six-inch line; surf-line attached.

Q. Was there any difference in the weather conditions and sea conditions? A. About the same.

Q. What size line was that? A. Seven-inch.

Q. That was made fast on board? A. Yes, sir.

Q. How long was it then before you got to using both lines?

A. When we was fast we tightened the same; heaved in on that line and then made that fast to the bits and then took the other line; got an equal strain on the six-inch line and that was made fast to the bits and then we started to go ahead on her on the main engines and heaving at the same time as the mate is forward there watching the slack on the chain. Whenever she jumps, the windlass will take the slack itself. When these swells would come, especially

(Testimony of Capt. Bruhn.)

these big ones, would hit broadside and wash over the deck and over the deckload here amidships. When these hit here she takes a heavy roll. We kept taking that way for sometime, then after that she commenced to come along gradually. When she got clear of that sand bank there, away from the beach, she was stranded there, we got ready then with her and heaved up our anchors and steamed ahead with her until, well, the schooner was about in line here, almost in a straight line with the Hilo wharf here.

Q. Will you mark on this map, if you can, the place to where you towed the schooner, before you cut her off?

A. It would be about here, in this direction; should be a little more out.

Q. Should be further out from the end of the railway wharf?

A. Should be a little further out. There was almost a straight line. [297]

Mr. WARREN.—We'll mark that "Halcyon-5." Having gotten her there, what was done?

A. Got orders from Captain *Moser* to stop towing.

Q. Captain Mosher was where?

A. He was aboard the "Halcyon."

Q. And then what happened?

A. I dropped my anchors and the schooner about the same time dropped his anchors.

Q. How many anchors did the schooner have?

A. I only saw one.

Q. Then what happened?

A. Then as the schooner was going astern, of

(Testimony of Capt. Bruhn.)

course, we came astern the same time with the wind and weather to help; still had our line attached to the schooner. She still held on to us.

Q. How many lines did you have then?

A. Two, still had the two lines. As we were paying out chain, the schooner came more and more; seemed to us his anchor was still dragging so we lay there; paid out on our anchor chains. Pretty soon Captain Mosher, the harbor-master, and the man in the boat there, introduced to me as the captain of the schooner, I didn't know the man's name; I don't know his name to-day, and he says, "This is the captain of the schooner and he wants you to hold on to her." He said, "He lost one anchor; he's only got one and that is down in the water, down the bottom with all the chain he's got. His anchor chains is no good"; that is the expression.

Q. What else?

A. Then, while he was there I asked the captain, I says, that was previously, before that. I says, "What did you cut my line for." He says, "No, I didn't cut it, but it got foul of a buoy." Of course, it's pretty hard thing to keep lines clear amongs buoys of that kind when there's vessels in a narrow space. It seems there's an old buoy there; has been lying quite awhile; sort of bell buoy, square with iron belts on. Well, it seems that the worms had got into the wood and our lines got caught on it. [298] I guess the bight of the rope must have caught it.

Q. What was the appearance of the parted end of that line?

(Testimony of Capt. Bruhn.)

A. When I heaved the line in and looked at the end of it, it looks the same as if the line had been cut with a blunt instrument, an axe or something.

Q. Up to that time had you *know* why the line had parted?

A. No, not until I spoke to the captain.

Q. That then was the second time? That was a different occasion from the one when you hollered to him?

A. When I hollered to him that's when the line parted; that's the instant it parted. I hollered to them, but if they hollered back from the "Halcyon," I wouldn't have been able to hear them.

Q. How long did the "Niihau" hold on to the "Halcyon" after that?

A. We laid there for a short while. He went back aboard the ship. I told him that all right I'd hold on to him, but to let our lines go for the time being; let one line go first. When he got on board they let the seven-inch line go; we hove that in. When we had that in we told him to let go the six-inch line as I wanted to change my anchorage as I wanted to get into a different position further ahead; so he agreed to that. Well, we hove up our anchor, steamed ahead and got right in line with the schooner to have clearing between the Hilo wharf here and also, where the "Enterprise" was lying out here. And we dropped our anchors, come back, and then run a line over to the "Halcyon." The six-inch line was made fast. We had nine fathoms of chain out, and we set

(Testimony of Capt. Bruhn.)

up a strain on the line to equal with the schooner's anchor chain and held on to him all that day and all that night and the next morning. There was orders the "Niihau" had to go alongside the "Enterprise" for freight for way ports; that is, outside ports from Hilo. A little after seven o'clock I hollered to the schooner then and told her they had to let go our lines as we had to go alongside [299] the "Enterprise" and load freight. There was nothing *side*. He let the line go all right.

Q. At that time, was there any difference in the weather?

A. It was moderated to a great extent.

Mr. RUSSELL.—What's that?

A. It was moderated to a great extent; it commenced to go down during the night after twelve o'clock to the time we let go; during the forenoon while we was alongside the "Enterprise" we was watching the schooner.

Q. Her anchor held after that?

A. Her anchor held after that.

Q. You say you put the "Niihau" in the position of "Niihau No. 2." Was there, in your judgment, any danger involved to the "Niihau" in so doing?

A. No. 2?

Q. When you brought the "Niihau" in and sent the line the first time, early in the morning?

A. Oh, here? Where is the No. 2?

Q. No. 2 is where you were when you first started.

A. There was a good deal of danger here. There is those buoys; the vessel swinging through in a dark



(Testimony of Capt. Bruhn.)

night and you can't locate them; and working around there the propeller might have caught the buoy and it might have thrown the blades off.

Q. If the propeller got involved with a buoy there as to disable it, what, in your judgment, would have happened? A. We would have lost hours.

Q. Your anchors would have held under the conditions there? A. Under ordinary conditions.

Q. Now, would you say that there was any danger to the men in the boat when they came with the line to the "Halcyon" the first time in her first position?

A. Yes.

Q. What degree of danger?

A. Of getting washed up against the ship or getting under her head gear there.

Q. On the occasion when the "Niihau" was sending her six-inch and then her seven-inch line, when the "Halcyon" was close to the beach, [300] what danger was there then to the "Niihau," if any?

A. After sending the six and the seven-inch line to the "Halcyon," there was danger of loss of our boat or might even lose some of our men; might have lost all. That's the danger.

Q. And as to the "Niihau" herself?

A. The danger as to the "Niihau" was the only danger of our winding up those lines in our wheel at that time.

The COURT.—But down there is no line.

A. Mr. Warren is referring down to the "Halcyon" over here.

Q. That is, when the "Niihau" was in the position

(Testimony of Capt. Bruhn.)

No. 3 and the "Halcyon" was in position 4, and your lines? A. Yes, our own lines.

Q. Very much danger?

A. There's a good deal of danger there. Our anchor chain is like a fiddle string. If any part of these lines should get on the wheel there is no living man will go down there to clear them.

Q. Have you *know* that to happen?

A. I have had it; we had different occasions here on our boats that we had lines on the wheel. The "Helene," we had to tow her over to Kapoho. We had a few years back at Honuipu the Iwalani carried away the stern-line the vessel going ahead on it, went right around the wheel. I had an occasion at Kukui-hale. There's a current sweeps up there to northward and she parted the line near the stern buoy and, of course, the vessel going off, the line came fast. When she came in the current swung her towards the landing. Of course, they can't use the engine when she's got one of these lines on the wheel. We asked for volunteers. Some of them tried it. I tried to get it myself; got a part of the line, not on the wheel, but outside the wheel. We had one fellow there, a half Chinaman; he was in the hospital two months.

Q. If a line had gotten foul of the "Niihau's" propeller on this occasion with the wind and sea as you have described them. what [301] can you say as to the danger there would have been on that account with her propellers in that condition?

A. In that condition and the state of the weather on that day we couldn't have used our engines.

(Testimony of Capt. Bruhn.)

Q. And what about your anchors?

A. Our anchors, we might have held on and we might not. If the wind had increased more, we was likely to drag as well as any other vessel because there is vessels dragged there before. I had an occasion here in Hilo—

Mr. WARREN.—Never mind that, Captain. Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. Captain, in these various instances where you spoke of the line getting in the propeller, were the vessels lost? A. No, sir.

Q. Was the vessel lost in any one of those instances? A. No.

Q. What was the full extent of the damage that resulted? A. On these vessels?

Q. Yes.

A. Well, they lost, one of them, they lost two days of time and had to pay towage for a vessel, for the Kaiulani that was sent for her.

Q. I mean what was the extent of the damage to the vessel? A. To the vessel?

Q. Yes.

A. By getting the line in the propeller?

Q. Yes.

A. The extent to the vessel at that time wasn't anything because she was lying in clear water.

Q. Now, you spoke here in this particular instance if the lines had gotten afoul of the vessel and there was, and if the anchors wouldn't hold here, of course, there

(Testimony of Capt. Bruhn.)

was danger of her going ashore. Well, now, there wouldn't be any likelihood of these lines getting afoul until an effort was made to pull off the [302] tow, the schooner, is that not so?

A. Was this alluding to the "Halcyon"?

Q. This is alluding to the "Halcyon." You were anchored there at the time you sent the line to the "Halcyon"? A. Is that the "Niihau"? Yes.

Q. You had demonstrated to your own satisfaction that you could hold her there?

A. She could hold her for the time being.

Q. The weather was pretty heavy? A. Yes.

Q. And then when you got behind of this "Halcyon," you were at the same time pulling on her anchor chains?

A. Yes, but where are you at now, at the first position?

Q. Yes.

A. When I was pulling on the "Halcyon," we were pulling on our anchors at the same time.

Q. Yes. A. Yes.

Q. So that that absolutely demonstrated that her anchors were holding all right?

A. Were holding *the*?

Q. Were holding the "Niihau"?

A. Her anchors were holding her at that time.

Q. Now, if that time the tow-line got foul of the vessel, you had had it—

Mr. WARREN.—The propeller.

Q. Yes, the propeller. You had had it already

(Testimony of Capt. Bruhn.)

demonstrated that her anchors would hold her?

A. Holding, yes, holding for the time being.

Q. Now, when you sent. Now, when you sent those men—I think it was Thompson and the other fellow—to make soundings, was that before you had started the tow, the very first time?

A. No, it was after we had the lines fast to the “Halcyon.”

Q. So that, when you sent the first line to the “Halcyon” that morning, she had not touched?

[303]

A. Who, the “Halcyon”?

Q. Yes.

A. I presume that she must have touched the way she was lying.

Q. The first time?

A. In the morning there, yes, I presume she must have touched; of course, I wasn't aboard the ship; I couldn't say, but according to the locality that she was in and the weather, surely she must have touched. My opinion is that she was touching all right.

Q. There was reported to you the fact that at her stern the depth was two and a half fathoms, was there not?     A. Yes.

Q. And she wouldn't touch in two and one-half fathoms of water, would she?

A. Yes, sir; what *were* the vessel drawing.

Q. Are you aware what the vessel was drawing at that time? Do you know?

A. You asked me if I thought that she was touching and I said, yes.

(Testimony of Capt. Bruhn.)

Q. Do you know how much water she was drawing?

A. No, I don't know exactly but I could come pretty close to it.

Q. If you don't know how much she was drawing—

A. There's no man living that can judge what a vessel is drawing when a vessel is moving up and down in the water.

Q. Why did you send around there to make soundings?

A. In order to find if there was any obstruction before I commenced to tow.

Q. What difference would that make?

A. There might have been a rock.

Q. When it was reported to you that she was at her stern, two and a half, in two and a half fathoms of water you concluded that she was not floating?

A. I concluded she was touching right along; the "Halcyon," where she was on the beach. [304]

Q. And you started to tow her with a six-inch line believing she was touching? A. Sir?

Q. You started to tow her with a six-inch line believing she was touching?

A. No; I said I believe she was touching when she was lying there and when we had our six-inch line attached to the "Halcyon." We hove on that line and brought her up gradually.

Mr. WARREN.—He's talking about the second time.

A. No, I'm talking about the first time. Then when we went ahead with her, got it all taut and



(Testimony of Capt. Bruhn.)

started up with her, hove in on our anchor chains the same as I explained to you.

Q. That's a rocky bottom there?

A. It's part of it, on this side nearest in, it's rocky.

Q. If she was touching she would be touching on rock? A. Well, if she was far enough in.

Q. When you started to tow her you don't think she was touching?

A. When I took that line from her, the way she looked to me, I thought she was a total loss and that there was no hopes at all even of saving her.

Q. You thought she was ashore; you thought she was on the rocks? I'm asking you when you started to tow her with that six-inch line, you didn't think she was on the rocks?

A. Not on the rocks but I think she touched. She was touching there as I saw the sea raising her up and down.

Q. Now, could you see the vessel?

A. I could see the object.

Q. It isn't true then that it was so dark that you couldn't see fifteen or twenty feet away?

A. I never mentioned anything that I couldn't see fifteen or twenty feet away.

Q. I know you didn't but I say, if any such claim—

A. Those questions has never been asked, but I say, I saw the object of that schooner. [305]

Q. So you could see an object fifteen or twenty feet away?

A. I could see an object further; I got pretty good sight.

(Testimony of Capt. Bruhn.)

Q. When you anchored the first time when you sent that line to the "Halcyon," you were about on a line with the end of the railroad wharf, is that right?

A. About in line with the end of the railroad wharf; that's where our anchors was lying, but the vessel itself was further in.

Q. About how far in?

A. About close up to the second buoy?

Q. If your anchors were about in line with the railroad wharf and you had ninety fathoms then your vessel must have been a little less than ninety fathoms from the anchors, is that right? A. Yes.

Q. How much of a line did you have to the "Halcyon" when *when* you first started?

A. Oh, after the lines were fast?

Q. Yes, after the lines were fast.

A. I should judge about sixty or sixty-five fathoms between the two ships.

Q. Now, estimate then from that how far the "Halcyon" was from the end of the railroad wharf.

Mr. WARREN.—Inner end?

A. Well, when this line was fast to the "Halcyon" we hove in the slack; after these lines were set up there was between sixty and sixty-five fathoms of line.

Q. How long is that railroad wharf, do you know?

A. That railroad wharf must be in the neighborhood of eight hundred feet; very little less, may be more, but I think it's in the neighborhood of eight hundred feet.

(Testimony of Capt. Bruhn.)

Mr. WARREN.—May I, at this time, *over* this sketch in evidence.

(Received in evidence and marked Libellant's Ex. "B.")

Q. Where were you, captain, before you took the position [306] "Niihau-2"?

A. We was out here; out in the bay here; anchored outside here.

Q. And are there any lights on this wharf?

A. No, there's not lights there except once in a while there may be a light shining through a little window; there's lights inside, but sometimes they burn and sometimes they don't.

Q. Now, if you saw the "Halcyon" that night, you could, of course, see the wharf?

A. Oh, when I got in there I saw the wharf.

Q. So that when you sterred in here your vessel was in no danger was it?

A. No. Of course there was—

Q. No danger of striking?

A. No danger of striking, but getting tangled up with the buoys.

Q. And if you could see the wharf, you certainly had steerage on the vessel?

A. When we got that far where we dropped our anchors there is no steerage on the vessel because the vessel was going in, we were depending on our anchors.

Q. There was the same danger of your getting tangled up with the buoys as your running into the wharf?

(Testimony of Capt. Bruhn.)

A. No; the wharf is a large object and can be seen. When the sea is running, the buoy is a hard thing to see; at night, when it's lying low out of the water and the seas are continually washing over it; and unless you could see that buoy you wouldn't know how to avoid running into it.

Q. What difference does it make whether that buoy could be seen or not if you could see the wharf and you knew that buoy was there?

A. I seen the wharf, and not knowing where the buoy is if you make her swing around she would swing on top of that buoy.

Q. It doesn't make any difference if you saw the wharf. A. I saw the wharf.

Q. What difference does it make if you knew that the buoy was there if *you that* buoy was there, what difference does it make?

Mr. WARREN.—I object to counsel's manner toward the witness. [307]

The COURT.—Overrule the objection.

Q. I'm asking you what difference it makes whether you could see that wharf or not as far as the danger compared with danger to the "Niibau" of running into the wharf?

A. The object that I have right in sight and this here is an object that I can't see at night.

Q. Well then, if you can avoid running into the wharf because you can see it and if that's your reason for being able to avoid running into the wharf, you could equally avoid running into the buoy if you

(Testimony of Capt. Bruhn.)

knew where she was?

A. I said the danger is of the vessel swinging and going into the buoy; I am not talking about running into the buoy.

The COURT.—Captain, I think that he is trying to get this kind of a question, you being acquainted with the water there and the position of the buoy, the mere fact that you can see the wharf and know the distance between the wharf and the buoy, you could easily avoid it without seeing it?

A. It's pretty difficult to handle a ship a short distance. It is a pretty short distance between the wharf and that buoy.

Q. At the same time, though there is that risk, the fact that you know the distance of the buoy from the wharf is some aid to you? A. Some aid.

Q. Now, you say there was danger in sending that boat to the "Halcyon"; that first boat. Well, if you thought there was danger at the time, why didn't you send a surf-line with it?

A. What is that Mr. Russell?

Q. You testified that there was danger to that first boat that went over with a line to the "Halcyon" that morning, didn't you?

A. I said that there was danger to the boats and we sent the six-inch line over to the "Halcyon."

Q. And you sent that on without any surf-line?

A. We sent that on without any surf-line.

Q. With the second boat that went you did send a surf-line? [308]

(Testimony of Capt. Bruhn.)

A. Because the men refused to go.

Mr. RUSSELL.—I move that be stricken out as not responsive.

Mr. WARREN.—I object to that motion to strike.

The COURT.—I think it has to be stricken out.

Q. Will you answer that yes, or no, please?

A. Will you please let me know—

Q. The second time that the boat went out, you did send a surf-line, didn't you?

A. The second time.

Q. Yes. A. That was in the early morning?

Q. Yes.

A. I sent the surf-line; we have no ship lines.

Q. Now, when the tow-line parted, you say the "Halcyon" was at No. 2, the "Niihau" at No. 2, is that right? A. Yes, that's right.

Q. *Are there* is the buoy that you have reference to somewhere off here?

A. No, the buoy is right here.

Q. It appears there are two "Niihaus" No. 2?

A. Yes.

Q. Now, this "Niihau" No. 2 should be changed to No. 3, and No. 3 to No. 4. We will change No. 2 to No. 3, and No. 3 to No. 4.

Q. I have reference now to No. 3. Referring to—

Mr. WARREN.—To No. 3 as now marked on the map?

Mr. RUSSELL.—Yes. Now, if the tow-line parted as the result of coming in contact with the buoy, the positions here must be absolutely wrong?

A. No. We was coming out here with the "Hal-



(Testimony of Capt. Bruhn.)

cyon," coming along here, you see; coming through here. The "Halcyon" comes this way.

Mr. WARREN.—Indicating between position No. 1 and 2.

A. As we come along we arrived off here and here is the end of the railroad wharf and that's a quite short turn to make; you can't cut a corner there; of course, the "Halcyon" come along here and she kept coming in on this side; most likely the slack of our line got caught on that buoy. The "Niihau" pulled off on this [309] side, the "Halcyon" on this side; naturally something had to give.

Q. Which buoy? A. This buoy.

Q. This one? A. No, that's No. 3 buoy. We took the buoys from inshore out; made this here No. 3.

Q. No, Captain, if your steamer, *you* vessel got up here, No. 3, and the hawser was caught around buoy No. 3 here, what force would pull the "Halcyon" to the position here marked No. 2?

A. What little headway she had.

Q. That's just your conclusion, she must have been caught? A. I think she was caught.

Q. You don't know anything about it?

A. Which, that the line was caught on the buoy?

Q. Yes. A. No.

Q. I call your attention to this map.

Mr. WARREN.—Libellee's Exhibit No. 1.

Mr. RUSSELL.—Q. You recognize this as the piles? Now your vessel, was of course, inside of these piles between the piles and the wharf?

(Testimony of Capt. Bruhn.)

Mr. WARREN.—Your vessel?

Mr. RUSSELL.—Q. The "Halcyon"?

A. Around in this direction; here somewhere.

Q. Well, can you, will you indicate where you believe the "Halcyon" was at the time you first—

A. When we were here?

Q. Yes.

A. The "Halcyon" was about off here; off here, like that, somewhere; of course, I was quite a distance off. The way I took it to be, she was right across the mouth of the river here.

Q. But here you have—

Mr. WARREN.—Here referring to Libellee's Exhibit 2.

A. Here's the piles here and we was there, about along right here; that is, right between the wharf and the piles. [310]

Q. Just indicate where the piles are.

A. Yes. Now, the "Halcyon" was about along here, and there is the old Hackfeld wharf, and the "Halcyon" is in here, in that direction.

Q. Will you indicate where those buoys are.

A. This is in the dark; I didn't take no dimensions; that's in my judgment when she was about there, the "Halcyon."

Mr. WARREN.—Will you put your initials by that mark?

The COURT.—Run a line out.

Mr. RUSSELL.—Marks W. C. B.

Q. Now, Captain, did you believe then that as you were anchored out here at the end of the railroad

(Testimony of Capt. Bruhn.)

wharf with sixty or seventy fathoms of line between you and the "Halcyon" that you were able to reach the "Halcyon"?

A. Yes. I'm saying after the line was hove taut. We had more line previously.

Wednesday, August 18, 1915.

Mr. RUSSELL.—May we stipulate at this time that all the testimony taken *de bene esse* shall form part of the trial of this case, with all the exceptions.

Mr. WARREN.—With the exceptions, yes.

Mr. RUSSELL.—Now, Captain, will you please indicate upon this map (Libellee's Ex. 2), the position of the "Halcyon" at the time the tow parted, the line parted.

Mr. WARREN.—If there are other marks on that, let's use a blue pencil.

Mr. RUSSELL.—Yes.

A. The position of the "Halcyon"?

Q. At the time the tow-line parted.

A. At the time the tow-line parted. (Witness marks on Ex. 2, which mark is made H-1.)

Q. Then your position at the time, the same time?

A. (Witness marks on Exhibit.)

Q. And that's N-1. Now, after you were engaged in the towing, at the time that the tow-line parted, you were engaged in towing, [311] were you?

A. We were.

Q. Pulling? A. Pulling.

Q. How far had you intended to take her out?

A. At that time?

Q. Yes.

(Testimony of Capt. Bruhn.)

A. To a safe anchorage out in the bay there.

Q. Did you have any definite point in view, in mind, at the time?

A. I had in mind to get her up to one of the buoys; anchor her off there somewhere.

Q. And that would be about where, if you will please indicate it on the map?

A. That would have been out here somewhere; up in this direction here.

Q. Just make a cross there.

A. (Witness makes a cross.)

Q. And it was the fact that you had intended taking her out here that prompted you to shout out to the "Halcyon" when the tow-line parted?

A. When our line parted, why, I sung out to him, but I lost control of her then.

Q. But it was because you had intended taking her out here?

A. Yes, out in a safe distance out in the bay; that was my intention.

Q. Now, you said that after a while you saw her dragging; that was about between fifteen and twenty minutes, was it?      A. Something like that.

Q. And where were you at the time that you saw her dragging?

A. We was lying in the same position here where we were anchored.

Q. Hadn't changed your position a little bit?

A. A very little; it might have been a little one way or the other, the ship swinging.

Q. And you remained there in order to stay by her?

(Testimony of Capt. Bruhn.)

A. Yes, to render assistance.

Q. About what time was it when the tow-line parted?

A. Well, that was somewhere around six, and a little after six. [312]

Q. What time was it when she went ashore, the "Halcyon" went ashore?

A. She went ashore, that was somewhere around eight o'clock; that is when she drifted over here.

Mr. WARREN.—Drifted over where?

A. From the railroad wharf towards the beach.

Q. You mean the place where she dropped anchor?

A. After our line parted.

Q. Did you observe at the time that the "Halcyon" had but one anchor?

A. I noticed it then that she had but one anchor.

Q. And that was one of the considerations that suggested the feasibility of staying by her?

A. That as well as the wind and water.

Q. That as well as the wind and water?

A. Yes, that as well as the wind and water; of course, I didn't know how much chain he had or the condition his anchor was in; if it was a heavy anchor or light anchor; that I didn't know.

Q. Then, will you indicate by a line the course she took in going toward the beach.

Mr. WARREN.—The "Halcyon"?

Mr. RUSSELL.—The "Halcyon."

A. The "Halcyon? Just dotted?

Q. Yes, a dotted line.

A. (Witness makes a dotted line.)

(Testimony of Capt. Bruhn.)

Q. After you saw her again dragging, what did you do?

A. We immediately got our hawser right in the boat.

Q. Will you indicate as near as you can the position of the "Halcyon" at the time that you began to move toward her?

A. Well, when we began to move to her that's where she started in here; we commenced to get ready then and tried to follow her up as soon as we could.

Mr. WARREN.—Here means what, H-1?

Mr. RUSSELL.—Yes. Do you mean that you kept following her all the time?

A. As soon as we got our anchors up; we had to get our anchors up and our lines ready; when she got drifting along here, we followed her right up. [313]

Q. And did you heave up your anchors and begin getting your lines ready when you first noticed her dragging?

A. As soon as we noticed her dragging we were getting our lines ready.

Q. How long does it take for you to heave up your anchors and get your lines ready?

A. By the time we got the lines coiled in the boat, heaved up anchors, and to get down here, around twenty-five minutes; in the neighborhood of that.

Q. At the time that the "Halcyon" was as near to the beach as she ever got, will you indicate the position of the "Niihau"? A. (Witness indicates.)



(Testimony of Capt. Bruhn.)

The COURT.—You mean the “Niihau” after she followed her up?

A. Yes, after she followed her up.

Mr. RUSSELL.—Marked N-2. You recognize the fact, Captain, that she, that the “Halcyon,” from the time she began to drag from the position “Halcyon”—1, H-1, that she was in danger of going on the beach? A. The way she was drifting.

Q. Why did you wait until she got as near to the beach as she ever did before you sent her a line?

A. I didn't wait until—

Mr. WARREN.—Object to that, because the witness has not in any way indicated how near the “Halcyon” was to the beach when he made his move.

The COURT.—As I understand, this means when she got to the nearest point to the beach that she reached?

Mr. RUSSELL.—Yes.

The COURT.—I don't see any objection to that.

Mr. WARREN.—The witness's testimony has not been—

Mr. RUSSELL.—I'll withdraw the question.

Q. Captain, you testified that you sent the “Halcyon” a line, the second time, about eight o'clock; is that right? [314]

A. Yes, sir, around eight o'clock.

Q. You also testified that the tow-line parted along at about six o'clock?

A. Little after six I testified.

Q. You also testified that she began, that you noticed her begin dragging her anchor and drifting to-

(Testimony of Capt. Bruhn.)

ward the beach about fifteen or twenty minutes after the tow-line parted; is that right? A. Yes.

Q. What were you doing in the meantime from the time that you saw her dragging until she got on the beach, until she got as close to the beach as she ever got; that's an hour and three-quarters?

A. We was preparing.

Mr. WARREN.—I think the same objection lies to that because there is no testimony that he waited until she got as near to the beach as she ever got.

(Question read.)

The COURT.—I don't see any objection to that.

Mr. RUSSELL.—Q. What were you doing in that hour and three-quarters?

A. We were preparing.

Mr. WARREN.—Now, I object to that, "What were you doing in that hour and three-quarters?" There is no testimony—

Mr. RUSSELL.—Withdraw the question.

Q. What were you doing during the time from the time that you first observed the "Halcyon" commence dragging and the time that she got as near to the beach as she ever got?

A. When the "Halcyon," when she was dragging, she was dragging along slowly, which I explained to you before, with sea and wind, and when I found out, when I saw that she didn't take a hold of her anchor, I immediately got everything ready and followed her up to render assistance.

Q. You say you were preparing. What did you do in the line of preparing?

(Testimony of Capt. Bruhn.)

A. Getting everything ready.

Q. What was that?

A. That was in the case of lines, [315] coiled in our boat.

Q. And how long a time did that take?

A. Well, that doesn't take so very long; took the time I got everything ready to stand by and move the ship slow.

Q. How long a time in point of minutes did it take for you to heave your anchors, prepare your lines, and get your boat in readiness?

A. In readiness? About something like about a half an hour; every bit of that.

Q. Will you please indicate on the map the position of the "Niihau" when you first sent a boat with a line to the "Halcyon"?

A. When we first sent it?

Q. When you first sent the boat with a line at the time after she began dragging toward the beach.

The COURT.—You mean on the first occasion?

Mr. RUSSELL.—No, on the second occasion.

A. I have indicated here; you marked it here, there's the "Niihau."

Q. So you were at N-2 at the time that you first sent a boat with a line?

A. I was at N-2, the position that the "Niihau" is in here indicated; that's the time when we sent a line to the "Halcyon" while she was dragging in towards the beach; that wasn't the first time, that was the last time.

The COURT.—The first of these two lines?

(Testimony of Capt. Bruhn.)

A. Yes, the "Niihau," the "Halcyon" hasn't shown up yet.

Q. You sent two lines in that place?

A. I'm saying this is the position we moved into over here; we paid out our chain and let her come down and that's the time that we sent the line to the "Halcyon" when she was going towards the beach.

Q. The six-inch line?      A. The six-inch line.

Q. Now, how long a time elapsed from the time you left the position [316] N-1 until you got to the position N-2?

A. How long a time up to the present time here now?

Q. How long a time did it take from the time that you left your position at N-1 until you arrived at your position at N-2?

A. To steam down there and redrop the anchors, that didn't take long. I never marked the minutes down, the exact minutes. In that space of time we was preparing and moving right along; when we arrived in this position here, we was continually working around and watching the "Halcyon," trying to follow her up. I didn't mark down every little thing.

Q. From the time you left N-1 until you arrived at N-2, until you dropped anchor at N-2, how long?

A. That was somewhere around twenty-five minutes.

Q. Did you send her a line, did you send the "Halcyon" a line immediately upon your arriving at the position N-2?

(Testimony of Capt. Bruhn.)

A. We started right after the "Halcyon," yes; got the boat crew and everything else.

Q. How long after you got your boat crew ready and everything was it before you sent her to the "Halcyon"?

A. The boat's crew was in, but it refused to go there.

Q. How long did they stay before they went?

A. They stayed for the time until we got the surf-line.

Q. I asked how long they stayed, and I ask that be stricken.

Mr. WARREN.—I object to it's being stricken.

The COURT.—He merely wants to know how many minutes.

Mr. RUSSELL.—How long a time elapsed from the time that the boat's crew were in the boat until the boat started with the line?

A. Well, that was a few minutes; it might have been between five and ten minutes, to get the surf-line.

Q. Captain, you say that about fifteen or twenty minutes after the tow-line parted you saw the "Halcyon" begin dragging her anchor. Let us assume that it was twenty minutes. You say [317] that you took from twenty minutes to twenty-five minutes more to proceed from N-1 to N-2. Is that right?

A. That's the time we got there; it didn't take us that time to get that far; that's maneuvering and everything included, going ahead.

(Testimony of Capt. Bruhn.)

Q. So that would be say forty-five minutes. Now, it was somewhere in the neighborhood of about two hours from the time that the tow-line parted until the "Halcyon" reached the beach. How do you account for the balance of that time?

A. Well, the "Halcyon" was dragging in slowly; she was dragging during that time.

Q. Yes, but what were you doing?

A. We was, I explained that before; I was watching her.

Q. So that while—you said that you sent her a line say about ten minutes or so after you anchored at N-2?

A. I didn't say that; I said we got our line ready.

Q. How long did you remain at N-2 before the line started off to the "Halcyon"?

A. So soon as everything was ready.

Q. I'm asking you how long in point of time?

A. When we sent the line to the "Halcyon," that was about between eight and half-past eight.

Q. Now, Captain, I'm not quite clear. You sent the "Halcyon" a line from N, your position at N-2, between eight and half-past eight. Is that right?

A. Thereabouts.

Q. You say the tow-line parted between six and half-past six?

A. The tow-line parted a little after six.

Q. So that two hours elapsed from the time the tow-line parted until she, until you sent her a line from N-2?

A. She was lying to an anchor there; there was



(Testimony of Capt. Bruhn.)

no necessity of sending a line until she commenced to drag.

Q. Then she was lying at anchor at what place?

A. She had put her anchor down. [318]

Q. Wasn't she dragging at that time?

A. Not right off.

Q. How long a time did she remain without dragging?

A. I said that before; in the neighborhood of fifteen minutes before I noticed particularly that she was dragging.

Q. That was in the position H-1?

A. She was never there; that's the "Niihau."

Q. I say the position H-1.

A. But you were pointing at the "Niihau."

Q. Now, I say at H-1, that's the only time she remained before you notice her dragging?

A. When she dropped her anchor we watched her until she commenced to drag.

Q. Now, Captain, here's what I am trying to make clear to the Court, and that is what you were doing, what the "Niihau" was doing during the time that intervened from the time that she began dragging or that the tow-line parted, until she went on the beach as near as she ever got?

A. The "Niihau" was lying to anchor.

Q. No, two hours elapsed, is that not so, Captain, from the time that her tow-line parted until she went on the beach; we will assume that she went on the beach. Two hours elapsed?

A. I don't think it was quite two hours.

(Testimony of Capt. Bruhn.)

Q. Well, any way, you said that you sent her a line from your vessel at N-2, between eight and half-past eight.

A. Somewhere in that neighborhood.

Q. You say that the tow-line parted little after six? A. Little after, yes, sir.

Q. That makes at least two hours, does it not?

A. Yes.

Q. What I'm trying to have the Court informed is as to what you were doing at that time. You waited fifteen or twenty minutes before you noticed her drag? A. Yes. [319]

Q. That accounts for say twenty minutes of the two hours it took you to proceed from N-1 to N-2; that is, the time that you consumed going—slowing in, twenty minutes; that is forty minutes, is that right?

A. That's right.

Q. Then, after you arrived at N-2 and sent a line on this boat to the "Halcyon," you say was about ten minutes.

A. That's when the boat's crew started.

Q. Yes. That only makes fifty minutes.

A. Well, the line has to be fast, the line ain't fast yet when the line is sent.

Q. What line, the line to the "Halcyon"?

A. To the "Halcyon."

Q. You said it took, in substance, you said it took two hours to go from the time that the tow-line parted until you sent a line to the "Halcyon."

A. While she was in a safe condition.

Q. Yes, but that was only about fifteen or twenty

(Testimony of Capt. Bruhn.)

minutes that she was in a safe position.

A. That is a long distance; she's a long ways from the beach here.

Q. What were you doing at that time?

A. I was lying to an anchor and watching the "Halcyon." They were moving over here; when she was going in we followed her up.

Q. In point of time how long were you lying to an anchor?

The COURT.—It was twenty minutes before you saw her begin to drag?

A. About in the neighborhood of that.

Q. And then, after that, how long did you lay at anchor before you took up your anchor?

A. Almost, I couldn't give the exact time; we started, then went to get our lines ready.

Q. As soon as you saw her dragging?

A. As soon as we saw. After that she was a-dragging slowly; then we hove up our anchors and went in here and dropped both anchors and then getting the boat crew and everything ready to run these lines.

Mr. RUSSELL.—Q. Captain, when you said that from the time you were in the position N-1 to position N-2, it took you as long as twenty [320] minutes. You take into consideration the time it took you to heave up your anchor? A. Everything.

Q. So that from the time you first saw the "Halcyon" dragging until you got to N-2, was about twenty minutes, is that right? A. It might have been.

Q. Well, so that, we have it here, Captain, that from the time the tow-line parted until you arrived

(Testimony of Capt. Bruhn.)

at the position N-2 was about forty minutes. Is that right?

A. Somewhere, which I said before, somewhere around seven o'clock.

Q. And then you sent a line, then, after you arrived at the position N-2 in about ten minutes or so, there was a line on its way to the "Halcyon," is that right?

A. Everything was ready and the line was ready.

Q. Now, can you explain where the balance of that time was consumed?

A. The balance is to get the line over there and to get the line aboard the ship, on board the "Halcyon" and get that line fast; and the next is to get our line set right. We have to take in line and get ours fast and everything.

Q. What time did you begin towing, begin to *to*?

A. Well, when we started to pull on her after all the lines and everything was aboard of her, I think that was in the neighborhood of half-past eight, I think, when the lines and everything was fast.

Q. How long a time did it take from the time you sent the line to the time that you started pulling?

A. That was from around eight o'clock and half-past eight.

Q. About half an hour?

A. A little more or a little less; of course, I can't give the exact minutes. It was about half-past eight when we started to pull.

The COURT.—Counsel wants to find out in this hour and three-quarters from the time the line parted

(Testimony of Capt. Bruhn.)

and the "Halcyon" dragged anchor up to the time she drifted on to the beach, as I understand, is between an hour and three-quarters and two hours. He wants to know [321] how you occupied that hour and three-quarters; he wants you to cover the whole of that hour and three-quarters and tell him what you were doing.

Mr. RUSSELL.—May I remind the Court the time is longer—from six or half-past six to half-past eight.

Mr. WARREN.—May I also remind the Court and counsel that the witness is taking into consideration the time he not merely sent the line, but got it aboard and got it taut up to the time they began heaving.

The COURT.—Let's get that straight from the witness. He wants to make you account for this time; he wants to show that you stood still for a while, and it's very important that you should know what you are talking about; whether you are taking from the time of the "Halcyon" dragging her anchor and the line parted, up to the time she had drifted ashore and stopped; or whether these two hours covered when her line parted up to the time you got the line aboard.

A. In this position here, your Honor, we was working on the "Halcyon" all the time.

Mr. WARREN.—N-2?

A. That's where we were working. After we had the first line, in my opinion, the vessel wasn't quite ashore then. She was coming in here. She commenced to go broadside, which I explained before,

(Testimony of Capt. Bruhn.)

when she got in here, near the beach, the suction under her stern and also the back action from the beach.

The COURT.—Then the two hours, was that the time, two hours to the time you got your line aboard?

A. That's included; all those times here, from the time we anchored here, the time we was working on the "Halcyon"; got the line over to the "Halcyon," hove on this line; and the boats had to come back and get that second line and make that fast.

Q. That two hours, was that the time that you got the line aboard, the first line? There were two lines after her line parted and she dragged anchor?

A. Yes; it was taken up here a little [322] after six, which I say; and up to the time that she drifted up on the beach, we was maneuvering the ship.

Q. What time did she drift on the beach?

A. On the beach there, that was after eight. She never got exactly on the beach.

Q. That was two hours, then, from the time the line parted up to the time she grounded?

A. About that.

Q. Now, he wants to know what you were doing those whole two hours.

A. Those two hours we got our lines on, getting the boat close, getting the line coiled in the boat. Now, there's a whole coil of rope coiled in the boat. That takes a little time to coil it because the line is stiff. Then the boat is taking up time getting the surf-line on. That took up time. Then pulling over towards the ship and getting this line aboard and for



(Testimony of Capt. Bruhn.)

the crew of the "Halcyon" to haul that line up.

Q. The two hours were up when she grounded?

A. She wasn't aground when we passed the line up.

Q. Her stern?

A. Her stern was kind of going into the surf.

Q. Then?

A. Then, when this first line was aboard, the boat came immediately and the second line was passed aboard and then those two lines were made fast and an equal strain. They were pulled taut. Well, on the first one we held the ship in a position, then when those two lines were fast we gradually commenced to heave up on our anchors and going ahead on the main engines. She was following us gradually.

Q. You were watching her after the line parted for twenty minutes or so; you say she was dragging?

A. Dragging.

Q. Now, from that time to the time she apparently stopped from getting her stern on the beach, it would be about an hour and forty minutes? What were you doing all that time. That is, I [323] understand you were coiling; you had to get out the new line because the old one had parted, and were coiling it in the boat and fastening a smaller line to it; and then you had to get up two anchors?

A. Not the last time.

Q. One anchor?

A. Now, we had one anchor down. We was lying here in this position, when we sent those lines to the "Halcyon." The only thing that we done was to heave the vessel and bring—

(Testimony of Capt. Bruhn.)

Q. What did you do, simply pay out chain?

A. We dropped anchors here and paid out chain.

Q. You didn't have to raise your anchors?

A. We didn't have to raise our anchors.

The COURT.—He said he raised his anchors from one to two.

A. She was placed here; that's after the line parted. But we're here now, where we're sending the lines now as the vessel is dragging in.

Q. At N-1 you had to raise your anchors, two anchors? A. Two anchors.

Q. How long did that take?

A. To raise those two anchors, heave up and get down there? That's somewhere in the neighborhood of twenty-five minutes; might have been a little more or a little less, and moving over here, following the schooner when she is drifting and re-anchoring here again; that's the second time; included in all this here, that's from litle after six up to eight.

Q. Did you have a big enough crew to get your lines out and get them ready while you were taking up your anchors?

A. They got our line ready on deck, but we couldn't very well have the boat aft if the propellers were moving or the boat would be very apt to get smashed up against the ship's side.

Q. You had to do one thing at a time?

A. We had to do one thing at a time; when as the anchors went [324] down and the ship came up to the wind we were working in the boat.

(Testimony of Capt. Bruhn.)

Mr. RUSSELL.—Q. Captain, you say that the tow-line parted a little after six; now, how much after six to the best of your recollection?

Mr. WARREN.—I object to that as asked and answered.

The COURT.—No, he says a little after six.

Mr. RUSSELL.—What was the answer, Mr. Warren.

Mr. WARREN.—A little after six.

A. It might have been between six somewhere around quarter past six; might have been a little after or little before. I know it was after six.

Q. Now, to your best recollection, Captain, what time was it when you sent the boat's crew with a line, the six-inch line to the "Halcyon"? What time was it at that time?

Mr. WARREN.—May I ask if counsel will make that clear, the time the boat left?

Mr. RUSSELL.—Yes, the time the boat left your ship with the six-inch line?

A. The time that we consumed?

Q. No, what time was it at that period, at that point?

A. That was around eight o'clock. A little after.

Q. You'd say a quarter after?

A. I didn't have time to look at the watch then because my mind was occupied.

Q. Would you say it might have been a quarter after eight?

A. I couldn't give the exact time, but it was in the

(Testimony of Capt. Bruhn.)

neighborhood around eight o'clock; little before or little after.

Q. Now, you say that when the six-inch line was made fast to the "Halcyon," she was not aground?

A. She was dragging towards the beach, I said, when the six-inch line, when they were near the "Halcyon," the "Halcyon" was then getting near where the large surf comes up; her stern.

Q. Now, at the time the six-inch line was made fast to the "Halcyon" and made taut, she was not aground? [325]

A. She had her stern in the surf after the line was made fast to the "Halcyon" and then her bow commenced to swing towards the Hilo side.

Q. After you had the six-inch line made fast?

A. They got aboard of her, then when they made the motion, we hove aboard the "Niihau." Then the "Niihau" was in a position that she commenced getting broadside towards the beach.

Q. Then you pulled on the six-inch line?

A. Then we pulled on the six-inch line; held our anchor chains and when it straightened, got an equal strain then we held her on safe there; then the boat came back and got the other line in there and got that fast to the "Halcyon."

Q. At that time that you got the seven-inch line to the "Halcyon," was the "Halcyon" free of the ground?

A. She was lying in a position of her stern here in the surf and her bow, naturally, as these big seas kept moving her in.

(Testimony of Capt. Bruhn.)

The COURT.—When you got the seven-inch line on board?

A. That's what I'm trying to explain to Mr. Russell; she was lying in the same position and we hauled with the six-inch.

Q. I got the impression that you pulled her bows out with the six-inch line?

A. We hove the six-inch line on board the "Niihau" and got our anchor chains and our line with an equal strain in a position to hold the schooner, then we run the second line.

Q. But you didn't pull her bows around with the six-inch line?

A. To a certain extent; naturally when this line is fast and her anchors coming and our line pulling her, we naturally moved her.

Mr. RUSSELL.—Q. Going back to the time that the tow-line parted. Did you notice the line as it was heaved in? A. Yes.

Q. Did you see it while it was being heaved in?

A. I saw it afterwards, after it was in. [326]

Q. Did you observe at that time that a big portion of it was gone? A. Not a very big portion.

Q. Thirty fathoms? A. No, not a big portion.

Q. Thirty fathoms? A. No.

Q. How many?

A. I observed when we had our line heaved in and the balance of the line that I saw—

Q. Now— A. You want to know—

Q. What the condition of the line was.

A. You want to know how I know?

(Testimony of Capt. Bruhn.)

Q. I want to know how many fathoms were gone?

A. That was cut off that line?

Q. Yes.

A. That was somewhere around fifteen fathoms; might have been a little less, I didn't measure it.

Q. You didn't measure it?

A. No, I did not measure it; but made a rough guess about that.

Q. Mr. Thompson went over to get the line from the "Halcyon," did he?

A. The piece that was left?

Q. Yes.

A. I know there was a boat's crew sent over there to get the piece of line that was aboard the "Halcyon."

Q. Didn't he ever report to you how much—

Mr. WARREN.—Object to it as hearsay.

Q. He can say yes or no. A. How much line?

Q. How much line there was taken from aboard the "Halcyon."

A. He reported to me that the balance of the line that was left aboard the "Halcyon" or remained there, was aboard.

Q. Did you see that broken line?

A. I saw the broken line.

Q. And you didn't measure it? [327]

A. I didn't measure it.

Q. What did you say that your judgment would be?

A. I said somewhere around twenty fathoms, a little more or less.



(Testimony of Capt. Bruhn.)

Q. You didn't say it was somewhere around fifteen fathoms?

A. I said it was somewhere around twenty fathoms, a little more or less.

Q. Well, at the time the tow-line was being heaved in, did you recognize that there was perhaps twenty fathoms gone?

A. After I saw the line tangled on the schooner?

Q. No. When did you first see the line tangled on the schooner? A. After it parted.

Q. Immediately after it parted?

A. Shortly after it parted I saw the line hanging down over his bow.

Q. When you saw the line hanging over his bow, you knew then that he couldn't have cut it?

A. I didn't know how much was hanging in the water.

Q. Then it was after that that you asked Captain Olson whether he cut the line?

A. When I asked I didn't know that it was Captain Olson; I didn't know the name, the captain of the "Halcyon," the man that Captain Mosher came along there and said that this is the captain of the schooner "Halcyon." And I asked him, I says, "What did you cut our line for," and he says—

Q. And that was after you had seen this line hanging from the—dangling from the "Halcyon"?

A. Oh, yes, the line parted before the captain came over there.

Mr. RUSSELL.—That is all.

(Testimony of Capt. Bruhn.)

Redirect Examination.

Mr. WARREN.—Q. What is the length of the "Niihau"?

A. The length of the "Niihau," according to her measurement is 148 feet two inches.

Q. Now, can you state what the distance is between the railroad wharf and the three buoys? How far are those buoys from the wharf?

A. Those buoys; you mean in a direct line from the wharf? [328]

Q. Yes, each one in a direct line from the wharf.

A. Well, I should say the average would be over two hundred feet.

Q. Over two hundred feet?

A. Over two hundred feet; that's direct from the wharf towards the Hilo side.

Q. And when you steamed in with the "Niihau" and dropped your anchors, the position that you made them on the sketch, and the boat swung around, at what time or stage of that movement did you have out ninety fathoms of chain?

A. How long we took?

Q. How soon was it before you let out the ninety fathoms of chain? Or, to put it another way. How much chain did you let out immediately upon dropping your anchor?

A. As we was going in we dropped one anchor and with about twenty or thirty fathoms of chain, then come around on the starboard and come up in this point and dropped the other anchor and let her go down.

(Testimony of Capt. Bruhn.)

Q. When you had dropped the first anchor and gave her chain enough to swing, taking that amount of chain and the length of the "Niihau," would it have been a possible operation to have swung in there without interfering with that buoy?

A. Yes, there was danger of interfering with the buoy.

Q. Did you realize that danger at that time?

A. Yes, I realized that.

Q. Can you say whether or not, with your knowledge of the location of the wharf, the fact that it is a thing built on piles. That is not objected to, I presume?

Mr. RUSSELL.—No.

Mr. WARREN.—And the direction of the wind and sea, whether there would be any difference in the strength of the wind and sea back toward No. 1 buoy from the shore as formed with the end of the wharf?

A. The wind and sea?

Q. Yes.

A. There wouldn't be quite as much [329] wind at No. 1 buoy the way we took it from the inshore. Only at times, these heavy puffs come they might strike, and, of course, there may be a little current.

Q. When you sent the first boat in without a surf-line when the "Halcyon" was in her first position of distress and later sent the mate to take soundings with a surf-line, why did you use a surf-line the second time and not the first time?

Mr. RUSSELL.—That's objected to, if the Court

(Testimony of Capt. Bruhn.)

please, as irrelevant, calling for the conclusion of the witness, not being any question that is intended to illicit fact, asking for the reasoning of the witness.

Mr. WARREN.—I'll add to that question, leaving out anything that may have been said to you by anybody, but confining your answer to reasons which you know yourself and which are based upon your knowledge of the conditions and your experience as a navigator and seaman.

Mr. RUSSELL.—I still object, if the Court please, upon the same grounds. I don't see what reasons the witness entertained would have any effect upon any liability on the part of the respondent.

The COURT.—This is a question which properly belongs to the direct examination. I don't see that it's redirect in any way.

Mr. RUSSELL.—I don't see that it is.

The COURT.—Mr. Russell, have you any objection to this question, Why didn't you use the surf-line when you sent the boat in the first time?

Mr. RUSSELL.—Well, I won't object to that; it is the Court's question.

The COURT.—Why didn't you use the surf-line when you sent the boat the first time?

A. The first time?

Q. Yes.

A. Because the boat went in; we give it the line and they pulled in with the six-inch line, because at the time I didn't know the danger that there was.

Mr. WARREN.—Q. Directing your attention to the matter of the wind, I'll ask you to compare the

(Testimony of Capt. Bruhn.)

strength and velocity and apparent effect of the wind in the position where you sent that first line with a boat [330] behind the wharf and the time you sent the line with the second made with the ship ashore, when she was close ashore, the second time. What was the difference between the wind conditions there in that first position and the second position?

A. That is, the first position early in the morning?

The COURT.—You're talking about the first effort?

Mr. WARREN.—Q. Sending your first line when you were close to the wharf, the "Halcyon's" first position near Waiakea River, as compared with location and conditions of wind where the "Halcyon" was the second time when you were sending a line a second time?

A. The wind kept increasing; heavier squalls.

Q. Now, you have drawn on this chart the position of the "Halcyon" at the place she was when the line broke and she parted; she dropped anchor as H-1. You have drawn the position of the "Niihau" at that time, which is here shown as N-1. You have then drawn the position of the "Niihau" after she had moved and taken the position N-2. Now, when the "Niihau" was at the position of N-2, will you please mark on this chart the locality of the "Halcyon" at the same time? A. Take the "Niihau"—

Q. When you got into that place.

A. Into that place?

Q. Yes.

(Testimony of Capt. Bruhn.)

A. (Witness marks.)

Q. Mark that H-2.

(Mr Warren marks.)

Q. After that did the "Halcyon" get any further in?

A. She gradually commenced to move in there with the seas and wind; she might hold for a little while when there was a kind of a smooth spell; of course, when these large seas come she kept moving.

Q. Now, will you mark on the chart the position that you have in mind when you were testifying on cross-examination that she had moved to the point as far as she ever got toward the shore; her [331] extreme position towards shore?

A. Her extreme position while we were—

Q. At any time.

A. That is, the position that she was in?

Q. When she was in her most extreme position nearest the shore; not merely a question of her stern, but the vessel as a whole. (The witness marks.)

Q. Mark that H-3.

(Mr. Warren marks.)

Q. Now, when she was in position H-3, her extreme position, at that time had you any lines on her?

A. Yes, sir; the time that we were getting the line on.

Q. When you were getting it on?

A. Yes, getting it on.

Q. When you sent a six-inch line that second time, that is, on the second occasion you sent a six-inch



(Testimony of Capt. Bruhn.)

line, what line was that? A. On the second line?

Q. The second?

A. The second line that was sent over when she was in this position?

Q. The first one when she was in that position; that was a six-inch line, was it? What one was it? Was it the same line that had been used before?

A. It was the same line had been used before.

Q. What was the distance between the "Halcyon" and the "Niihau" when you sent that line?

A. The distance?

Q. Yes, between the steamer and the schooner when you sent that line?

A. The distance then was in the, between the two vessels; that is, before the lines were heaved taut, the distance between the two vessels, I should judge then was in the neighborhood of around ninety fathom or so.

Q. Was the remaining part of that line long enough to reach; that six-inch line that you had left after the first break in the morning, was that long enough to reach?

A. There was a four-inch line attached to it. [332]

Q. By the time the schooner made fast—

A. The six-inch line covered enough to make fast after the vessels were hove in; we were hove up taut. There was length enough left.

Mr. WARREN.—That's all.

Recross-examination.

Mr. RUSSELL.—Q. You say ninety fathoms was

(Testimony of Capt. Bruhn.)

the distance between the "Niihau" and the "Halcyon" at the time you got the first line made fast? Well, you judge it to be ninety fathoms from the length of that line; that's the way you know it is ninety fathoms, is that right?

A. I said it was in the neighborhood of ninety fathom.

Q. What do you base your judgment on; from the length of the line, don't you?

A. It's the length of the line. And part of the line we had aboard and the other part that was fast to the schooner.

Q. Captain, you say twenty fathoms was gone; that would leave a hundred fathom?

A. There was ninety fathoms between the vessels; I say one end was made fast to the ship and the other end we had line enough on the "Niihau" to heave her in position with the four-inch line attached.

Mr. RUSSELL.—That's all.

The COURT.—I would like to have you get out the distance between the two ships when he got his line fast.

A. The distance between the two ships.

Q. After you had your six-inch line fast on both vessels.

A. Well, the distance between the ships then when the lines were fast and we was ready to pull on it, after the two lines were on, I should judge that was somewhere between sixty and seventy fathoms; in the neighborhood of that; that is where the two lines were attached.

(Testimony of Capt. Bruhn.)

Mr. RUSSELL.—Captain, did you ever measure that line, the remaining part of that broken line; the part that was left on the “Niihau”? Did you ever measure that? [333]

A. The line that was left on the “Niihau”? We generally measure those lines when we go aboard.

Q. Captain, please just answer my question. Did you ever measure the long part of that line that was broken? A. No, I didn't measure the long part.

Mr. RUSSELL.—That's all.

The COURT.—Captain Bruhn, there's one feature of this that I am not quite clear about. When the line parted, when you were towing the “Halcyon” the first time and the line parted, were your anchors still down?

A. The first time, judge, when we towed her out?

Q. Yes.

A. No, our anchors was up then because we had the schooner; we was pulling her. For instance this would be the Hilo wharf here and here we come along in this direction here; of course, judge, here was the bow; we was going along this way and coming around the wharf, and the schooner was following us straight; we made the first turn, and likely as she come along she couldn't make the turn that quick, and that wind and sea, the breakers would keep her; she went ahead and us going the other way. Here was the buoy and here the tow-line. In fact, the way the schooner was coming she was pulling this way and this line was afoul—

Mr. RUSSELL.—I object. I move to strike the

(Testimony of Capt. Bruhn.)

statement of the witness that the line went afoul of the buoy. I asked him directly yesterday, do you know how that line parted? Do you know it went afoul of the buoy? He said he didn't know.

The COURT.—That's all, Captain Bruhn.

**Testimony of David Hau, Jr., for Libellant.**

Direct examination of DAVID HAU, Jr., a witness on behalf of libellant, called and sworn.

Mr. WARREN.— [334] Q. David, did you go out in the launch with Manuel the morning that the schooner "Halcyon" got in trouble in Hilo?

A. Yes, sir.

Q. Now, where did the launch go?

A. The launch go over to that vessel.

Q. To the schooner? A. To the schooner.

Q. And how close did you go to the schooner?

A. We go right close to the schooner.

Q. What part of the schooner? A. The bow.

Q. And did you hear anything said between Manuel and the captain of the ship?

A. Yes, sir, I heard Manuel call to the captain to give us a line, make fast to the buoy, and the captain he said no want it, no want no line.

Q. What else was said?

A. He said, well, I'm all right.

Q. Who said that?

A. The captain on this schooner.

Q. Yes.

A. The captain on the schooner, he told Manuel I'm all right; Manuel told him he going to drift; cap-

(Testimony of David Hau, Jr.)

tain, he said he ain't drifting.

Q. Did the captain ask Manuel to do anything?

A. Manuel? That's when he said make a line on the buoy, but the captain didn't want it.

Q. Was anything said about a line on a buoy?

A. He told us to go there and get a line, but the line is under the chain.

Q. Did the launch go over there?

A. We go over there and try hard to pull; we can't pull.

Q. Then what did the launch do?

A. The launch come back again.

Q. Anything more said to the captain by Manuel when you got back? Did you tell the captain anything about that line?

A. Yes, Captain told us, how's that line? We told him jammed. Then Manuel kept telling him give a line, make fast to the buoy; he said, "I'm all right." [335]

Q. Was that after you got back from the buoy? He said that again? A. Yes.

Q. Tell us just as near as you can remember, were those all the words Manuel said?

A. The captain said, "All right"; we got nothing to do after that.

Q. Was there anything more said about what the "Halcyon" might do, the schooner? Do you remember anything else that was said there? When was it that Manuel said to the captain, you're drifting? Was that the first time or the second time?

(Testimony of David Hau, Jr.)

A. The second time, we come.

Q. And did the captain and Manuel say anything else about drifting?

A. Manuel told the captain, "You're drifting," but the captain said, "I'm all right; I ain't drifting."

Mr. WARREN.—Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. When you first asked him if he wants a line to the buoy you remember he say that he didn't have any more line?

A. He didn't say he got no line; he said he want no line on the buoy.

Q. You remember you asked him if he want line and he said, "You go over and get that line from the buoy"? A. No, no.

Q. Then afterwards he said, "Go over and get the line from the buoy"?

A. Yes, after that he told us go there and get that line.

Q. Did you see that boat drifting?

A. Yes, sir, we saw it's drifting; that's the reason we hollered for line make fast with the buoy.

Q. You saw him drifting same time that the tow-line parted?

A. When the tow-line was cut the anchor is down; he dropped down his anchor; going up little all the time.

Q. Dragging anchor? A. Yes. [336]

Q. Did you see the tow-line cut?

A. I saw the tow-line is right straight up and



(Testimony of David Hau, Jr.)

down the bow; I don't know it's broke or not; about eight fathom long that line from the bow right down straight.

Q. Into the water?      A. Yes.

Q. So you didn't see it break?

A. Didn't see it break.

Q. You saw it after it broke, after the tow-line parted then you saw it dropped down?

A. Dropped down.

Mr. WARREN.—That's all the witness I expect to call in Hilo, your Honor. There is one, possibly two, others in Honolulu besides other evidence of value, but I have no other witnesses to call at this time.

Recess.

**Testimony of F. W. Filler, for Libellee (Recalled).**

Direct examination of F. W. FILLER, recalled on behalf of libellee.

Mr. RUSSELL.—Q. Captain, I don't recall whether you were asked the other day as to what time it was that you saw the "Halcyon" at the time they sent a line to her when she was near the beach?

A. I don't know as I have very clear recollection; must have been somewhere between seven and eight o'clock to the best of my knowledge.

Q. Captain, will you state what your experience has been at sea, or will counsel. I want to ask him something in regard to navigation.

Mr. WARREN.—His qualifications as a mariner are admitted.

(Testimony of F. W. Filler.)

Mr. RUSSELL.—What was the sea at that time?

A. What was what?

Q. What was the sea, how was the sea at that time? [337] A. Fairly rough.

Q. Could you say how many feet were the swells?

A. Oh, that's pretty hard to estimate.

Q. Your best judgment.

A. About a four or five-foot sea running; which is considerable sea in a harbor.

Q. Captain, what would have occurred if the "Halcyon" had gone ashore? What would have happened to her?

The COURT.—At what place?

Mr. RUSSELL.—Q. At the place where you saw her touch.

Mr. WARREN.—Assume the wind and sea to be?

Mr. RUSSELL.—Well, as it was at that time?

A. Well, I think the vessel would have gone broadside on to the beach and there certainly was sufficient swell to pound the vessel on the sand, very likely and swing a little over; possibly she might have thrown her out; anyway she might have spring her butts; the joints, you know; and rendered her absolutely unseaworthy.

Q. How long a time do you suppose it would take?

A. That depends on the state of the vessel and her condition at the time she goes on the beach.

Q. Did you get close enough to the vessel to examine her? Assuming that she was a pretty old vessel?

(Testimony of F. W. Filler.)

A. Three or four hours would seal her fate.

Q. How long a time would it take before she would break up.

Mr. WARREN.—I don't think this is quite within the range.

The COURT.—You must put a load of lumber into her.

Mr. RUSSELL.—Q. Assume that she had a load of lumber, her hold very well filled?

A. Will you kindly ask me your original question?

Q. Assuming that she had, that the hole was pretty well filled with lumber and that she was an old boat? [338]

A. What is your question, Mr. Russell?

Q. How long a time would it take before she would break up?

Mr. WARREN.—I wish to stand on my objection to that as an hypothetical question; an hypothetical question can only be based upon matters which have the support of some evidence in the case.

Mr. RUSSELL.—I'll withdraw the question. Captain, assuming that the vessel which you saw, that is, the "Halcyon," as it was there on shore, was a pretty old vessel; say in just a sufficiently seaworthy condition to come across the Atlantic with a load of lumber, and that she had gone ashore, keeled over broadside, can you state, can you give us an opinion as to the minimum time before she would break up?

Mr. WARREN.—The same objection lies to that question, your Honor.

(Testimony of F. W. Filler.)

The COURT.—I allow the question.

A. Well, in the face of subsequent conditions, I don't believe the vessel would have gone to pieces at all. I don't believe that the worst sea would be sufficient to tear that vessel to pieces, although the sea was sufficiently rough enough to render her unseaworthy.

Q. And if she had been broke up, Captain, can you give any opinion as to the feasibility of having saved the cargo or a substantial part of it?

Mr. WARREN.—I think objection lies; it doesn't appear that this witness is an expert on the question of salvage.

Mr. RUSSELL.—Captain, have you ever been aboard a vessel or taken any connection with a vessel that had gone ashore? A. Yes.

Q. And have you ever been in a vessel or taken any part in salvaging cargo or any part of the cargo of a vessel that had gone ashore? A. Yes.

Mr. RUSSELL.—Now, I will ask you, Captain—

Mr. WARREN.—I want to put a few questions on cross-examination.

The COURT.—Yes. [339]

Mr. WARREN.—Q. What has been the extent of that experience, Captain?

A. I was in two wrecks myself.

Q. Where?

A. One on the coast of the north of Sweden, and I've seen a number of stranded vessels in Kahului and had a hand in salving part of the vessel, part of the cargo.

(Testimony of F. W. Filler.)

Q. Any lumber cargoes?

A. No, no lumber cargo.

Q. Have you ever, in your experience, had to do with the stowing of lumber in the hold of a vessel?

A. Yes.

Q. Do you know how it is stowed? A. Yes.

Q. And the discharging of lumber cargoes from the hold of a vessel of this character?

A. Considerable experience in that.

Q. Any with a lumber vessel on the beach?

A. I've had no experience with a lumber vessel on the beach, no.

Q. Your experience in discharging lumber has been simply at a dock or wharf? A. Yes.

Q. Have you had experience in discharging cargo from any wrecked vessel ashore?

A. Yes, at least one, Kahului; the "Spartan."

Q. But no lumber?

A. No, she had coal and we salvaged the vessel or at least part of the vessel; her rigging, her sails, furniture.

The COURT.—I consider his experience in handling lumber, loading lumber, qualifies him.

A. I think it would have been possible to save the greater portion of that cargo.

Mr. RUSSELL.—That's all.

Cross-examination.

Mr. WARREN.—Q. You say if she had not broken up—

Mr. RUSSELL.—Oh, excuse me; that suggests

(Testimony of F. W. Filler.)

something that I overlooked. [340] Captain, if she had broken up, what, in your opinion, would have occurred with reference to the probability of saving some of that cargo, a large portion of it?

A. Well, if the vessel had broken up, the cargo would have come ashore of its own accord in more or less damaged condition.

Q. Can you give any opinion as to what proportion of that cargo would be saved whole?

A. That's problematic.

Mr. WARREN.—The question in your mind, Captain, as to how long it might be before the vessel broke up is really dependent to a considerable extent upon the condition of the vessel herself?

A. Yes, and the severity of the storm.

Q. Now, if a vessel of that character or any vessel laden with lumber goes broadside and she is pointed a few times broadside, isn't it a fact that her cargo will shift and be tilted over to the shore side so that it will cause the vessel—

A. Not if she's been stowed properly with lumber.

Q. That you don't know?

A. No one can tell, but there is every reason to believe the cargo will be very much intact.

Q. What are your reasons for stating as you have that she wouldn't have broken up?

A. That storm wasn't severe enough to sufficiently wreck that vessel to tear her open; in the first place, she was loaded full of lumber; there is



(Testimony of F. W. Filler.)

practically a whole unit for the water to pour over.

Q. You don't believe that the lumber on the deck would have been displaced?

A. Had the vessel been discharged yet or was the deck load still on.

Q. There is evidence that part of the deck load had been taken off? A. In that case I couldn't say.

Q. If part of the deck load had been taken off you couldn't say the rest would not come over? Then the condition would exist where there would not be that unit and there would be destruction of her superstructure?

A. That might have been, but I doubt that particular storm was sufficiently severe enough to do that. [341]

Q. Do you know anything at all of the wreck of the "Kilauea-Hou" about the same place where her boiler lies on the beach?

A. That was long before my time.

Q. You don't know how long it took her to break at all?

A. No. I've seen the ship "Spartan" stand six weeks on the reef at Kahului.

Q. What about the "Helga" that went on the reef at Waikiki? A. Which one?

Q. The "Helga" that went ashore at Waikiki?

A. She was on the coral, wasn't she?

Q. She was what?

A. On a coral bottom; a great deal depends upon what the ship is resting on.

Q. But you don't know how long she lasted?

(Testimony of F. W. Filler.)

A. No.

Q. A vessel in Hilo bay, if not staunch and strong, might break up any time?

A. I merely venture to state that that particular storm which was raging at the time could not have broken up that vessel; there wasn't sufficient sea.

Q. Not within the forty-eight hours that followed? A. No, I don't think so.

Q. That's the worst storm Hilo's had in many years, isn't it?

A. I don't know that it was any worse than any other.

Q. Do you recall any storm that was worse, before?

A. I've seen more severe weather when there wasn't any wind at all. They are much more destructive, the wind storms.

Q. I understand that, assuming she was a fairly old vessel you think she would have heeled over in three or four hours?

A. She would have what? That hasn't anything to do with the age of the vessel, the heeling over of her.

Q. I understood that was part of the question, assuming that she was an old vessel and assuming she was loaded with lumber, how long would it have taken her to break up, to go broadside?

A. I haven't answered any such question. [342]

Q. What about the currents in Hilo bay, Captain, what way do the currents run?

A. With reference to this wreck?

(Testimony of F. W. Filler.)

Q. Yes, along this beach here.

A. Of course, they've got a little current to contend with, you know, coming in from the Wainaku Point and the current naturally is drawn on by the efflux of the Waiakea River; so there is usually a current from the north to the south.

Q. Where does the flotsam and jetsam, sea-weed and so on, usually accumulate in Hilo bay?

A. Some of it right behind postoffice or Hilo Mercantile Co. warehouse; some to Waiakea, but in that case, to Waiakea, it drifts out to sea.

Q. What lumber is ground up and ingrained with sand, does that affect its commercial value, do you know?

A. Just simply the sand alone wouldn't do it unless the edge of the lumber had been sufficiently destroyed to necessitate resawing. It would naturally affect it some, few dollars a thousand.

Q. If the vessel were to break up and the cargo become subject to the wash of the sea, you are merely assuming, you're assuming merely that probably the greater part of it could be picked up?

A. I presume here in Hilo it could, yes.

Q. You do not think it quite probable that it would be scattered around Hilo bay and Cocoanut Island. I believe a great deal of that lumber would find its way to Cocoanut Island, of course; a great deal of it would be washed upon the beach.

Q. And some of it probably find its way outside and get washed up on some of the other shores?

A. Some of it might go straight to sea.

(Testimony of F. W. Filler.)

Q. Have you ever bought and sold lumber commercially to any great extent?

A. Yes, in Kahului for seven years and a half, eight years. [343]

Q. And the breakage of sticks of a full length of the value of the remaining parts a great deal, does it not?

A. Well, that again depends upon what you are breaking; certain classes of lumber you can use it at short lengths.

Q. Short length lumber is always considerably cheaper than long length?

A. Yes, certainly, sure.

Q. Do you know what sort of cargo it was?

A. I understand it was redwood.

Q. You don't know what sort of pieces?

A. I don't recall; all redwood cargo here is mostly flat lumber.

Q. Flat lumber is very likely to be injured by splitting and cracking than timbers? A. Yes.

Mr. WARREN.—That's all.

Mr. RUSSELL.—That's all.

The COURT.—Is there any distinction in your mind between a vessel breaking up and a vessel becoming a total loss?

A. Well, a vessel can be so badly injured by the pounding of the sea so as to be unfit for service.

Q. Then she is a total loss?

A. She is a total loss.

Q. Suppose a vessel going ashore on a sand beach,

(Testimony of F. W. Filler.)

lying there for some hours and becoming imbedded in the sand and the sand rushing around her without injuring her, might she be a total loss from being so imbedded?

A. In so far as it would cost more than the vessel is worth to dig her out.

Q. Is that one of the things that happens on the sand seashore?

A. Yes, that is, as a matter of fact, what makes it so much harder to salve the vessel.

**Testimony of J. D. Easton, for Libellee.**

Direct examination of J. D. EASTON, a witness on behalf of libellee, called and sworn. [344]

Mr. RUSSELL.—Q. Mr. Easton, you are the assistant manager of the Hilo Mercantile Co.?

A. I am.

Q. And the Hilo Mercantile Co. is the local agent of the Charles Nelson Co., the owner of the schooner “Halcyon”?

A. Not local agent in my interpretation of the word agent. We represent them so far as their lumber vessels are concerned. We have no regular agency for the Charles Nelson Co.

Q. And the lumber part of the cargo aboard of the “Halcyon” was consigned to the Hilo Mercantile Co.? A. It was, yes.

Q. Had you been aboard the “Halcyon” when she came in?

A. I went aboard when she tied up to the wharf.

Q. And was the hold, what was the condition of

(Testimony of J. D. Easton.)

the hold in regard to the amount of lumber that was in it? A. The lumber on her deck?

Q. No, in the hold?

A. I couldn't see the lumber in the hold at that time.

Q. Then with regard to the lumber on deck? Was there, what proportion of that was taken off?

A. What proportion of that was taken before she got into trouble?

Q. Yes.

A. A very small portion; if I recall correctly she only worked one day and probably between forty and fifty thousand feet taken off.

Q. And she still had some lumber on her deck?

A. When she drifted from the wharf?

Q. Yes. A. She did, considerable.

Q. Do you know what proportion of the entire cargo she had on board, on deck?

A. I don't know exactly; I could tell fairly accurately.

Q. What is your best recollection?

A. About forty per cent of it would be on deck; sixty per cent [345] in the hold; redwood cargo.

Q. And what with regard to the more valuable lumber or less valuable lumber; was that on deck or in the hold? Which was on deck and which was in the hold?

A. That would be about the same; sometimes they load the more valuable lumber in the hold. They try to get the clear lumber in the hold. I don't know what the conditions were as far as she was concerned.



(Testimony of J. D. Easton.)

Q. This cargo was consigned to two firms?

A. Two firms, Hackfeld and the Hilo Mercantile.

Q. And part of that you say had been taken off?

A. Part of our cargo had been taken off; a very small part of it.

Q. And did you see the "Halcyon" on the morning that she was in trouble? A. I did.

Q. And what time did you arrive on the scene?

A. When I first saw her?

Q. Yes. A. About ten minutes to seven.

Q. And where were you?

A. Coming up from the house to work; right on the road there by the bridge across the Waiakea River.

Q. And did you watch her until the "Niihau" sent a line to her?

A. Practically all the time after that; not all the time. I came up to the store and rang up Mr. Nicholls. I went down the beach and watched her and off and on I was on the beach all morning until they got her out of the place she was.

Q. Well, did you see her before they sent a line to her? A. That morning? Yes, oh, yes.

Q. I mean just immediately before.

Mr. WARREN.—The second line?

Mr. RUSSELL.—Yes. And that was what time?

A. That they sent a line to her? Between eight and nine o'clock. I don't know exactly what time.

Q. And did you see the "Niihau" there?

A. Yes, I saw the "Niihau." [346]

(Testimony of J. D. Easton.)

Q. And did you take any particular notice of the "Niihau"?

A. Yes, I noticed her about quarter to eight, I think it was. The "Niihau" changed her position. She was lying considerable distance offshore. About quarter to eight she came in closer; then they had a shore boat alongside her; one of their shore boats and some men in it. I noticed that particularly.

Q. How many times did you see the "Niihau" move over, change its position?

A. Only once that I recall.

Q. With regard to the railroad wharf, where was the "Niihau" before you saw her change its position?

A. She would be north, almost due north of the railroad wharf.

Q. And then she changed her position to the point where she began to tow the "Halcyon"?

A. Yes; I'm under the impression that she came in and dropped her anchor and then backed up.

Q. And how long a time elapsed from the time that she dropped her anchor at the last point, until the boat was sent out to the "Halcyon"?

A. About an hour or an hour and a quarter. You mean she changed her position from where she was when I first saw her?

Q. Yes.

A. After she dropped her anchor, after she changed her position, about an hour or an hour and a quarter.

(Testimony of J. D. Easton.)

Q. And were you noticing the "Niihau," taking particular notice of the "Niihau"? A. Yes.

Q. Was there any reason for your taking notice of her?

A. Yes. I was wondering why they didn't go and give the ship a line.

Mr. WARREN.—I move to strike that out as a conclusion of the witness, the mind of the witness having no bearing on the operation of the "Niihau."

The COURT.—I think I will sustain the objection.

Mr. WARREN.—And the answer be stricken.

Mr. RUSSELL.—Will you state whether or not the fact of the Hilo [347] Mercantile being the owners, that is, being the consignees, had anything to do with your observations? A. It did.

Mr. WARREN.—I object to that because it's sufficient the witness made some observations.

The COURT.—I think that's testimony.

Mr. RUSSELL.—Did you observe any distress signals going up on the "Halcyon"?

A. I did; at least, I presume they were distress signals; they were some kind of signals.

Q. What was it you observed?

A. Flags; I don't recall though what they were. He run up two or three flags.

Q. And with regard to the time that the little, that the boat from the "Niihau" went to the "Halcyon," did this flag, or these flags go up before or after they had started from the "Niihau"?

A. The flags were raised at the mast of the ship and the boat was immediately put out from the

(Testimony of J. D. Easton.)

"Niihau"; that is, the small boat.

The COURT.—At the same time?

A. Just as soon as they went up she went right out.

Q. How long a time elapsed from the time the flags went up until the boat started?

A. Immediately afterward.

Q. How long a time had the boat remained along, near the "Niihau" before it started?

A. I should say fifteen minutes, twenty minutes. If I recall correctly, fifteen minutes.

Q. And did you see the "Niihau" as it towed the "Halcyon" out?     A. I did.

Q. To its anchorage in the bay?     A. Yes.

Q. At what time was it that they stopped towing?

A. When they stopped the tow?

Q. Yes.     A. It was nearing ten o'clock.

Q. Can you give us any more accurate time?  
[348]

A. I have a memorandum on the manifest of the ship just what time they had her out.

Q. When you made that memorandum was it correct?     A. It was correct.

Q. Have you seen that recently?

A. I looked at it before coming up here.

Q. Would that refresh your recollection as to the time?     A. It did.

Q. What was the time?

A. Ten-fifteen was the time I had on that memorandum.

Mr. RUSSELL.—That's all.

(Testimony of J. D. Easton.)

Cross-examination.

Mr. WARREN.—Q. Did you see the steamer boat of the “Niihau” when it was first alongside the steamer, before it put off?

A. I don’t know whether I saw it when it was first alongside; after the “Niihau” moved alongside to a closer anchorage, I noticed that boat alongside with some men in it.

Q. Could you observe from where you were, what they were doing?

A. I couldn’t see what they were doing.

Q. And between the boat and the steamer, could you see what, if anything was being done?

A. No, I couldn’t see anything. They was evidently doing something. They were moving around in the small boat.

Q. They were moving around, you could see that?

A. Yes, I could see them moving around.

Q. How long after the distress signals went up was it before the small boat arrived at the “Halcyon” with the line?

A. Between six and ten minutes, I should say. It was going in very fast; they had the wind behind her.

Q. Are you positively sure that that boat didn’t leave the steamer until those flags had gone up?

A. I am sure of that.

Q. You are sure it wasn’t on its way there?

A. When the flags went up? [349]

Q. Yes. A. I am sure.

Q. From your own observations you distinctly saw

(Testimony of J. D. Easton.)

those signals go up before that boat left the steamer?

A. Yes, sir.

Q. But then, you say it left immediately.

A. Immediately the flags went up the boat left the ship, left the steamer.

Q. And you mean that the "Niihau" lay in the position where she was already an hour and quarter before the small boat left?

A. I wouldn't say positively whether it was an hour or an hour and a quarter or not. I don't know just what time she changed her position from her anchorage off of the railroad wharf to the inside anchorage.

Q. Is that what you mean by the hour, from the time she picked her anchors up.

A. I think it was an hour or an hour and a quarter.

Q. From her position off the wharf?

A. No, from the second anchorage. When I first saw her, it was seven o'clock in the morning. The "Niihau" was anchored off the railroad wharf; and some time after that she changed her anchorage.

Q. The time that was taken up in making that change you do not include in that hour or hour and a quarter?

A. She was on her insider anchorage at least an hour before she put the boat out.

Q. Does that mean from the time she arrived there?

A. From the time she arrived out here near shore?

Q. Yes.



(Testimony of J. D. Easton.)

A. I saw her come in and drop her anchors.

Q. Do you know after she dropped her anchors, what she did?

A. She backed up a bit and came in closer to the shore. [350]

Q. You saw her drop her anchors; saw that she was paying out chain. You say you don't know when that small boat was first alongside of her?

A. I don't know just what time; some time after she dropped her anchor I noticed this small boat alongside.

Q. How long after?

A. I couldn't say; might have been half an hour, might have been fifteen minutes.

Q. You didn't note those times particularly?

A. No, I didn't note those times.

Q. Do you know from which side of the deck of the "Halcyon" or from what part or portion of the deck the cargo had been removed?

A. No, I couldn't say as to the "Halcyon." I could say as to the general rule in unloading a ship.

Q. I'm asking you as to the "Halcyon."

A. I couldn't say.

Q. You saw her after the part of the cargo had been discharged? You didn't see her in that condition?

A. No, I didn't see her because she had only discharged the one day.

Q. Did you see her afterwards so that you could know what part of the cargo had been discharged?

A. I saw her after she went alongside the wharf

(Testimony of J. D. Easton.)

again to finish her discharging.

Q. Did you then notice?     A. I did not.

Q. What then would be the ordinary way, assuming she was discharged in the ordinary way. Where would it be taken from?

A. As a rule, they take the lumber off the deck; take the most from the left-hand side so as to give her a list.

The COURT.—Which side?

A. I don't know if it was port or starboard.

Mr. WARREN.—She was discharging for the railroad wharf? [351]     A. Yes.

Q. And her bow was facing north?     A. Yes.

Q. And when she was in that way what was done?

A. Most of the lumber is taken off the port side first: that is, the first few cars of lumber, so as to weight her down on the starboard side to give her a list inshore. They would take a little from off the port side then they would work on the starboard side.

Q. So you think in taking off fifty thousand feet they would take it off both sides?

A. Take it off both sides; most on the left-hand side.

Q. And for that purpose it would be necessary to a certain extent loosen the bindings or presses, whatever it may be that the cargo is secured with on the deck?

A. The lashings are all loosened before she commences discharging.

Mr. WARREN.—That's all.

(Testimony of J. D. Easton.)

Mr. RUSSELL.—That's all.

The COURT.—Q. You didn't see her earlier in the morning before she had a tow-line out to the "Halcyon" when the "Halcyon" was off the mouth of the Waiakea River?

A. She was off the mouth of the Waiakea River when I first saw her ten minutes to seven; she was right off of that old, we call it the Hackfeld wharf; that old wharf there just this side of the railroad wharf.

Q. All that you have been telling about happened after she had been towed out a little ways and anchored again.

A. I don't know of my own knowledge; I understood she had a tow during the night. I did not see that.

The COURT.—That's all. [352]

Thursday, August 19, 1915.

**Testimony of A. Duvel, for Libellee.**

Direct examination of A. DUVEL, a witness on behalf of libellee, called and sworn.

Mr. RUSSELL.—Q. Captain, what is your business?

A. I am agent for the Pacific Guano & Fertilizer Co., Honolulu.

Q. That is you are the Hawaii agent. A. Yes.

Q. And have you had any sea-faring experience?

A. I have.

Q. Will you state what that experience has been?

A. Well, I have been following the sea for 19 years.

(Testimony of A. Duvel.)

Q. And you have had a master's license?

A. I think I hold one now.

Q. Do you recollect when the "Halcyon" got in trouble here in Hilo Bay?

A. I do not recollect the day but I remember the incident.

Q. And did you see the "Halcyon" at the time that she got so close to the shore or on the shore there that she was towed off by the steamer "Niihau"?

A. I did, sir.

Q. Did you have occasion to examine the vessel afterward? A. I did.

Q. How soon after?

A. After she had discharged her cargo.

Q. You examined her with the view of determining as to her sea-worthiness? A. I did.

Q. Captain, can you state what would have occurred if that vessel had gone ashore? In what manner would she have gone on the beach?

The COURT.—You're speaking now of the second time she was in danger?

Mr. RUSSELL.—Yes.

A. Well, I suppose she would have gone broad-side on.

Q. And keeled over? A. Keeled over. [353]

Q. Then in your opinion, what would have occurred, what would have happened to her?

A. If the rough weather had kept on and she had been there long enough she might have broken up.

Q. How long do you think it would have taken before she would have broken up?

(Testimony of A. Duvel.)

Mr. WARREN.—Under what conditions?

Mr. RUSSELL.—Under the conditions if the weather had continued as it was

A. Well, it might have taken a week.

Q. Do you know what the weather was, how it continued after that day? A. No, I do not.

Q. And do you recollect the condition of the weather at the time?

A. Well, at the time it was very rough, the roughest sea in the harbor, in fact, I have noticed since I came here.

Q. Do you know how long that condition lasted?

A. No, I do not, I cannot remember exactly whether it was two or three days, or might be longer.

The COURT.—You say it might be longer than two or three days?

A. It might have been longer, I cannot recollect exactly.

Q. You know how long the vessel was held out by the “Niihau,” do you recollect that?

A. I don't know exactly. I believe the “Niihau” got hold of her probably some time in the forenoon, might have been 9 o'clock or 10 o'clock. It might have been later. I believe that was about the time, I am not certain.

Q. Well, do you recollect how soon after she came back to the wharf?

A. No, I do not. I know she anchored outside but when she did come to the wharf, I do not know.

(Testimony of A. Duvel.)

Q. Do you know what the weather was after she left her anchorage outside and came back to the wharf?

A. I believe it was smooth, smooth weather.

Q. Well, Captain, assume that the weather had subsided in the course of a couple of days to a condition as the sea was in at the time that she went back to the wharf, what in your opinion would have occurred to the vessel had she gone on the beach?

A. Will you kindly repeat that question, Mr. Russell?

Q. Assuming that the weather had subsided to a condition as the sea was at the time that she went back to the wharf, what in your opinion would have occurred to that vessel?

The COURT.—If she had gone ashore?

A. That is after she had been ashore?

Q. After she had been ashore.

A. Well, she might have been in such a condition she might have filled full of water.

Q. And what else would have occurred in regard to the probability of sand surrounding it?

A. She might have sunk. Oh, you mean by being at the beach?

Q. Yes.

A. Well, she might have been imbedded in sand.

Q. And how long a time would that condition have remained, that she was imbedded in sand? How long she would remain there imbedded in the sand?

A. Well, she might have been there to-day.



(Testimony of A. Duvel.)

Q. Have you ever had in your experience occasion to observe wrecks?

A. I haven't been in one myself, but I have seen quite a few of them.

Q. And did you ever have occasion to observe any salvage work done from vessels that had gone ashore? A. No, I have not. [355]

Q. Are you able from your experience as a seafaring man and from your observations of vessels that have gone ashore to give an opinion as to the feasibility of saving any of the ship's cargo had she gone on the beach and become embedded in the sand?

Mr. WARREN.—I think, your Honor, that that is objectionable on the witness' answer that he has not had to do with salvage operations.

The COURT.—I will overrule the objection and you will answer that question, yes or no.

A. I have misunderstood the question. I understand the salvage of the vessel.

Q. No, the cargo.

The COURT.—You are to answer that question, yes or no. A. Yes.

Q. What is your opinion in that regard?

Mr. WARREN.—I do not understand whether the question relates to the vessel or to the cargo.

Q. Cargo.

A. I have been employed in the salvage of the cargo, but not in the salvage of the vessel.

Q. What is your opinion as to the feasibility of having saved the cargo or a substantial part of the cargo of that vessel?

(Testimony of A. Duvel.)

Mr. WARREN.—I'd like to ask the Captain what kind of cargo salvage have you done?

A. General cargo.

Q. Not lumber cargoes?

A. No, I have not been in lumber cargoes. In general cargoes, I have assisted myself.

Q. Merchandise and so on? A. Merchandise.

Mr. RUSSELL.—What is your opinion, Captain?

A. I think that cargo could have been saved. [356]

Mr. RUSSELL.—That's all.

Cross-examination.

Mr. WARREN.—Q. You stated Captain that you made an examination of the "Halcyon" after she had been unloaded? A. I did.

Q. As to her condition for the purpose of determining whether she was able to *do* to sea, is that right? A. I did.

Q. And in fact you were one of three surveyors who made a survey of that vessel in an official capacity? A. I was.

Q. Now, the recommendation at the conclusion of your survey of that vessel was that you did not consider the "Halcyon" fit for the voyage in her condition? A. That's right.

Q. Will you describe a little more particularly what condition she was in at that time?

Mr. RUSSELL.—I object to that as immaterial and irrelevant.

A. I remember some of it, I might not remember it all.

The COURT.—How is it irrelevant?

(Testimony of A. Duvel.)

Mr. WARREN.—On the question of how soon she might have broken up on the beach.

A. I know her planking was pretty bad outside in the butts. She was leaking pretty badly in there. She was rotten.

Q. What was rotten?

A. Some of the planks outside, especially in the butts where the planks joined.

Q. Above or below the water line?

A. That was above the water line.

Q. Did you ever make an examination of her below the water line?

A. We had a diver and he said a part of her keelsome was gone, [357] if I remember right, and that she had opened up about 20 feet from the stern post in a line along the *kneelsome*, that is, if I remember right. I cannot remember exactly, that is about a year and a half ago.

Q. Would your recollection be refreshed by seeing a copy of the survey and the report you made at that time? A. It certainly would.

Mr. RUSSELL.—Here's one right here.

Mr. WARREN.—Is this a copy of that survey and report?

(Mr. Warren hands the witness a document which the witness reads to himself.)

A. That's right, that's a copy.

Q. This report, as you have just looked it over as you now recollect it, is a correct statement according to your best knowledge and belief as to the condition of the vessel? A. Yes.

(Testimony of A. Duvel.)

Mr. WARREN.—I would like to offer a copy of that report in evidence.

The COURT.—You have no objection, Mr. Russell?

Mr. RUSSELL.—Why, no, there will be no objection.

(Libellant's Exhibit "C.")

Q. So that when you were unable as a matter of fact to make an exterior examination of her hull below the water line, your examination was made inside below the water line, was it not? A. It was.

Q. And it was that condition which you found inside which lead to your conclusion that the hull below the water line must be in such a bad condition as to render the vessel unseaworthy? A. Yes, sir.

Q. The divers' report which is attached here George Haggerty is made part of the report, was there a subsequent and more full report made by the divers?

A. There was a later one by somebody else, some other diver. [358]

Q. Was that in any way made in connection with your survey as part of it? Was there a subsequent examination made by any other diver than Haggerty? A. It was.

Q. And your board of survey made another examination of the vessel after repairs had been made?

A. It did.

Q. And this is a copy of the subsequent report after repairs had been made?

(Mr. Warren hands a document to the witness

(Testimony of A. Duvel.)

which the witness reads to himself.)

A. That's right, that's a copy.

Mr. WARREN.—You identify that as a copy of the divers' later report after repairs were made. There is no objection I presume to copies instead of originals?

Mr. RUSSELL.—No objection.

(Libellant's Exhibit "D.")

Mr. WARREN.—That's all.

### Redirect Examination.

Mr. RUSSELL.—Q. Captain, in your final report I will refresh your recollection. You gave it as your opinion as follows:

(Mr. RUSSELL reads.) You have a distinct recollection of that? A. I do.

Mr. WARREN.—In this first report mention is made of the fact of the schooner having struck on the reef three times on going in, on what is that based? A. That's on the say-so of the crew.

Q. And the captain?

A. I don't know whether the captain said so, I can't recollect.

The COURT.—You mean going into the harbor?

A. Going into the harbor. Instead of going in the proper entrance, she came over the reef.

A. In your testimony in speaking of the divers' report you [359] said he reported the bottom opened up from the post so many feet?

A. It was from the stern post running forward I think he said 20 feet.

Q. What does that mean, opened up?

(Testimony of A. Duvel.)

A. The plank next to the *kneelsome* supposed to have opened up.

Q. Making an —

A. Making an opening for the water to rush in.

**Testimony of E. T. Nichols, for Libellee.**

Direct examination of E. T. NICHOLS, a witness on behalf of libellee, called and sworn:

Mr. RUSSELL.—Your name is E. T. Nichols.

A. Yes, sir.

Q. And you are the manager of the Hilo Mercantile Company? A. Yes, sir.

Q. And the Hilo Mercantile Company was one of the consignees of the cargo of the "Halcyon" upon its arrival here in January of last year?

A. Yes, sir.

Q. Mr. Nichols, did you see the "Halcyon" at the time she was— A. Yes, sir.

Q. Did you see her at the time she hoisted her flags? A. Her distress signals, yes, sir.

Q. You saw that? A. Yes, sir.

Q. Where were you at the time that you saw it?

A. On the railroad wharf.

Q. And did you make any note of the time that that was done? Did you observe the time of that?

A. When the signals were broke out, you mean?

Q. Yes. A. Yes, sir.

Q. At what time was that?

A. That was at, if I may be permitted to refer to a memorandum—

Mr. WARREN.—Made at that time? [360]



(Testimony of E. T. Nichols.)

A. A memorandum taken from letters I wrote at that time.

Q. When did you make this memorandum?

A. This morning.

Mr. WARREN.—I don't think that is sufficient.

Mr. RUSSELL.—Is this a file from your office?

A. Yes, sir.

Q. Is that first one a carbon copy of a letter that you wrote to the Charles Nelson Company?

A. Yes, sir.

Q. In January?      A. Yes.

Q. Of last year?      A. Yes.

Q. Does that refresh *you* recollection as to the time?      A. Yes, sir.

Q. And what was the time?

A. In giving the answers I want to be perfectly accurate.

Q. What was that time?

A. At 8:35 in the morning.

Q. Did you at that time observe the steamer "Niihau" in the bay?      A. Yes, sir.

Q. And did you see a life-boat or one of the steamer boats leave the "Niihau" for the "Halecyon" with a line?      A. Yes, sir.

Q. Now, with regard to when the signals went up, when was this that this boat started for the "Halecyon," before or after?

A. Before or after the signals went up?

Q. Yes.      A. After the signals went up.

Q. And do you remember how soon after?

(Testimony of E. T. Nichols.)

A. That is, how soon after the small boat left the steamer? Q. Yes.

A. About five or ten minutes after.

Q. Had you observed the steamer any time before this boat left her? [361]

A. For about an hour and a half before that I was on the wharf at seven o'clock or about seven.

Q. And where was the "Niihau" at that time?

A. You mean in reference to the position in which the "Halcyon" was then lying?

Q. Had you seen her move in?

A. The "Niihau"?

Q. The "Niihau"?

A. Before she put the line aboard the "Halcyon"?

Q. Yes. A. Yes.

Q. From what position did she move with regard to the end of the railroad wharf?

A. Well, she was when I first saw her out towards the end.

Q. On a line with the railroad wharf?

A. Yes, she then changed her position and came back in towards where the "Halcyon" was lying.

Q. Now, how long did she remain at the last position that you name, that is near the "Halcyon" before she sent the boat to the "Halcyon"?

A. You mean in her last position before she sent the boat to the "Halcyon"?

Q. Yes.

A. She was there, I might express it this way; she was there about a half or three-quarters of an hour, probably more like a half an hour. As I was

(Testimony of E. T. Nichols.)

watching her she evidently pulled out her anchor chain and dropped back which would take about fifteen minutes and then she was then apparently standing *of*, a matter of ten or fifteen minutes before the boat had left with a line to the "Halcyon."

Q. What took you down there?

A. Down to the wharf?

Q. Yes.

A. I was telephoned a little before seven that the "Halcyon" was liable to go ashore. [362]

Q. Do you remember by whom?

A. Mr. Easton, one of our employees.

Mr. RUSSELL.—That's all.

Cross-examination.

Mr. WARREN.—Q. After the "Niihau" had moved from her position opposite the end of the railroad wharf and taken up the position nearer the "Halcyon," did you notice where her small boat was just alongside of her before it left, how long it had been there?

A. Apparently the boat had been over her side and alongside of the steamer before she had stopped at her second anchorage.

Q. By stopped, do you mean dropped her anchors or swung to her anchors?

A. Dropped her anchors.

Q. While she was paying out chain?

A. While she was paying out chain.

Q. Could you observe where you were what was being done with that small boat?

A. It looked to me as though there was one or two

(Testimony of E. T. Nichols.)

crew of men in the boat. What they were doing I couldn't see. They were that far off that I couldn't see, only that they were paying a line from the steamer into this small boat or rowboat.

Q. Then are you quite sure that the small boat did not leave the steamer for the "Halcyon" immediately upon the flag's going up?

A. Not immediately. It was a few minutes afterwards. Positive of that.

Q. You are positive it was not before?

A. Positive. I have a very distinct recollection of making a remark.

Mr. WARREN.—I object to that. Tell us what you observed, please?

Q. But it was immediately after?

A. It was immediately so within a matter of five or ten minutes [363] after the signals broke out the small boat left the steamer's side.

Q. How long did it take the small boat to get a line to the "Halcyon" after the flags went up?

A. A matter of about ten minutes.

Q. And they had the line on board?

A. They were alongside and evidently, I should say evidently had the small line.

Q. The heaving-line? A. The heaving-line.

Q. What time did you come down, I mean about how long had you been before the flags went up watching the vessel?

A. I was down there at seven o'clock. Ten minutes of seven was the time I got the telephone at my house. I got into an automobile there and the flags

(Testimony of E. T. Nichols.)

went up at 8:35. It would be an hour and thirty-five minutes.

Q. So that for something over an hour and a half there you were watching her and no flags or signals were sent up from the vessel until 8:35?

A. Not during the time I was there.

Q. At that time, how was the "Halcyon," how close to the shore, or I will put it another way. After the flags went up did she go in nearer to the beach?

A. Yes.

Q. How much?

A. She was dragging her anchor quite a bit. I took a line from where I was sitting to an imaginary point on one of the buildings on the seashore.

Q. From your observation, did she go on the beach with her stern?

A. I don't think that I'm capable of answering that. To me it did not appear as though she was on the beach.

Q. Did her dragging stop before the line got to her?

A. To the best of my recollection, no. She seemed still to [364] be going in but not as fast as she was when the signals broke out.

Q. When her movement began to slow down, isn't it a fact that her bow began to point toward the Wainaku Mill?

A. I didn't notice it from where I stood. I was in about that position almost opposite to her.

Q. You were standing where on the railroad wharf? A. Towards the land end of the wharf.

(Testimony of E. T. Nichols.)

Q. And she seemed to be broadside to you then?

A. Yes.

Q. And before her signals broke out in what direction was she heading? How was she dragging her anchor?

A. Practically in the same direction. She was heading bow end out dragging her anchor and her position did not change from the time I was there to the time that the "Niihau" got her line aboard.

Q. Now, from your position, will you look at this map? From your position at the place near the foot of the railroad wharf across to where she was lying and if she was almost broadside to you then her bow would have to be pointing more or less toward Wainaku Mill?

A. Well, possibly. I didn't notice whether she was lying actually broadside or whether she might be pointing slightly that way, apparently broadside to me.

Q. You would see her starboard side from where you were?

A. I could see one side, that would be the right side facing the bow.

Mr. WARREN.—That's all.

Mr. RUSSELL.—That's all.

The COURT.—After the signal went up did she swing at all toward broadside on to the beach?

A. If she did she swung so very little that I didn't notice [365] her. Apparently to me there was no change in her at all, that is, she had not swung one way or the other.



(Testimony of E. T. Nichols.)

Q. And did you watch her until the "Niihau" commenced to pull? A. Yes, sir.

Q. And then she was in the same position?

A. Practically so. After I saw her line aboard and saw the vessel begin to move, then I left and then viewed her for a matter of some several minutes just opposite the Matson warehouse and saw her towed out into deeper water.

The COURT.—That's all.

Mr. RUSSELL.—That's all. That's all we have to offer at present.

Honolulu, Tuesday, September 14, 1915.

Mr. WARREN.—Q. In this matter, if the Court please, it has been agreed between counsel that Mr. J. A. Kennedy, President of the Inter-Island Steam Navigation Company, that if called as a witness in this case, he would testify that the Inter-Island Steam Navigation Company is the owner of the steamer, "Niihau"; that the vessel's tonnage is 341 tons; her complement is a crew of 37 men and master, and that her value is between forty-five and fifty-five thousand dollars; that is correct, Mr. Russell?

Mr. RUSSELL.—That is correct.

### **Testimony of A. S. Cantin, for Libellant.**

Direct examination of A. S. CANTIN, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Mr. Cantin, where were you employed on the 13th day of January, 1914?

A. I was employed by the Hilo Railroad Company.

(Testimony of A. S. Cantin.)

Q. And where were you working on the morning of that day, say from seven on?

A. Renewing the piles at the Hilo wharf. [366]

Q. On which side of the wharf?

A. We were renewing the piles on both sides of the wharf, in fact, all over the wharf. We were taking out piles and putting other piles in.

Q. Did you on that day observe the difficulty that the schooner "Halcyon" got into? A. I did.

Q. About what time was it and where in the morning when you first noticed her?

A. We came to work in the morning and I think it was just a little after seven o'clock I noticed the "Halcyon" lying at anchor on the port side of the wharf, that is on the Hilo side of the wharf.

Q. How with respect to the end of the wharf?

A. Well, the place that I was standing seemed to be about the middle buoy and about in line with the smokestack of the Wainaku Mill.

Q. As she laid there when she first came?

A. Yes.

Q. Will you look at one of these charts?

The COURT.—Where were you standing?

A. I was standing about a quarter of the distance down the wharf on the left-end side of the wharf.

Q. From the mainland?

A. From the mainland.

Q. Referring, Mr. Cantin, to this map marked Libellee's Exhibit #2, calling your attention to the railroad wharf? A. Yes.

Q. Asking you to disregard other pencil markings

(Testimony of A. S. Cantin.)

on this map, locate approximately the position of the "Halcyon" as she lay when you came to work about seven that morning?

A. I was standing about in here on the wharf. This is the river here, she was about on that line.

Q. Could you in red ink make a little cross to indicate her position? [367]

The COURT.—It is a good deal better to make a long line.

A. I should think about in here.

Mr. WARREN.—Use red ink please.

A. As near as I could judge.

Q. Now, will you make a little arrow and indicate the way her bow was pointed and how long did she lie there before you noticed any change?

A. I was watching her and it looked to me like she started to drag her anchor.

Q. How long before you noticed that?

A. It must have been about five minutes after I was on the wharf there. It was so unappreciable that I took this range and watched her. She was going back gradually then she seemed to go a little faster and she got in. She was in about this position here.

(Witness marks on the map.)

Mr. WARREN.—Now, we'll mark the first one, position 1 and the second one, position 2, making a little arrow to indicate her bow.

A. That's the bow right in here (indicating). Of course I had no range to tell how she was drifting.

Q. Then what happened?

(Testimony of A. S. Cantin.)

A. I noticed the "Niihau" started at about the time she reached this position here.

Q. Position 2?

A. Position 2, yes, sir. She started out to come over here and then dropped an anchor in about here, I should think as near as I could judge.

Mr. WARREN.—The red ink mark will determine your marks from the other? Indicate the position where the "Niihau" dropped her anchor?

A. It looked to me she dropped her anchor in about here. She dropped one anchor. [368]

Q. Mark that N-1 with a capital N to indicate the "Niihau, N-1."

(The witness marks.)

Q. Then what did she do?

A. Then she started to go ahead. She got back some and then she started to go ahead trying to place her other anchor.

Mr. RUSSELL.—Who started to go ahead?

A. The "Niihau." You see, she dropped one anchor and she was going up broadside to the vessel, at least a little broadside, and she was trying to locate herself from what I could understand, to drop this other anchor. That is what she finally done.

Mr. WARREN.—That's what it appeared to you as you watched her? A. Yes, as I watched her.

Q. When she got her second anchor dropped then what did she do?

A. Well, she commenced to back down towards the beach but as she got in about off here this vessel was on the beach.

(Testimony of A. S. Cantin.)

Q. Now, will you indicate the place where she was, where the "Niihau" was when you say the vessel was on the beach?

A. It must have been in here as near as I can place it.

Mr. WARREN.—Witness marks N-2.

Q. At that time where was the "Halcyon" laying?

A. She was laying on the beach in about this position (indicating). There is a boiler there. I don't know the exact location of that boiler, but she was lying so the stern of her, the boiler was off her stern about in this position here.

Q. About pointing where with respect to the sugar mill?

A. I should say about 20 degree off from that point.

The COURT.—Her bows out?

A. Yes, sir, she was lying between 15 and 20 degrees.

Mr. WARREN.—What was the angle of the "Halcyon" with regard to the beach line?

A. The beach line?

Q. Yes. [369]

A. About 15 or 20 degrees to the beach.

Q. To the beach? A. Yes, sir.

Q. Now, will you mark here the position of the "Halcyon" the best you can, when you say she was in that position?

A. I don't know where this boiler is here. If I could get the line of the boiler I could tell she was

(Testimony of A. S. Cantin.)

lying about in here as near as I could judge, pretty near that position.

Q. Will you mark that H-2?

A. (The witness marks.)

Q. Now, can you tell us, Mr. Cantin, from the time you say you noticed her begin drifting when you arrived there? Did you arrive about seven?

A. It must have been after seven.

Q. Did you notice then she was beginning to move? A. Not for a few minutes.

Q. How long was it before you were certain that she was dragging?

A. Well, first I thought she was surging from the action of the waves, then about, say fifteen minutes afterwards I knew then she was moving.

Q. And how long was it? Give us your best judgment before she got to position 2? I wish to make a correction. I have marked two positions of the "Halcyon" that way. This last one should be 3. Change H-2 to H-3.

A. (Witness makes the change.)

Q. Indicating her position on the beach there?

A. Yes, sir.

Q. When did the "Niihau" begin moving to go to her assistance, about how long after?

A. She started to her assistance when she was in her second position.

Q. That was about when?

A. That was about an hour after I got there as near as I could judge. [370]

Q. And about how long did the operations take



(Testimony of A. S. Cantin.)

before she had a line on the vessel to pull?

A. I should think about an hour and three-quarters.

Q. Before she began to pull?

A. Before she began to pull, yes, sir. Somewhere around there.

Q. Was there any time in your observation of the maneuvers there that the "Niihau" appeared to be lying still and doing nothing?

A. No, sir. I thought that the actions of the "Niihau"—

Mr. RUSSELL.—That's objected to.

The COURT.—Just state what the facts were?

A. Please repeat the question.

Q. (Question read.) A. No, sir.

Q. What sort of weather was it then, Mr. Cantin?

A. Well, it was blowing a very strong gale there and there was considerable surf and sea running.

Q. Anything unusual for Hilo Bay?

A. Well, I haven't had very much experience in Hilo Bay, but there was a very strong wind blowing.

Q. How about the sea?

A. The sea, there was a good swell running.

Q. From your observation of the "Halcyon" could you determine whether or not she touched the beach or went ashore?

A. When they were pulling her off you could see that she landed on the beach and then when a wave would come and lift her up she would pull ahead and that's the only way they got her off.

Mr. WARREN.—That's all.

(Testimony of A. S. Cantin.)

Cross-examination.

Mr. RUSSELL.—Q. After you observed the "Niihau," did the "Halcyon" begin to move? How long a time elapsed before the "Halcyon," before the "Niihau" did anything? [371]

A. The "Niihau" got where?

Q. At the time you first saw the "Halcyon" begin to move when she began dragging the anchor?

A. She was lying near the wharf there.

Q. About four or five hundred feet?

A. Well, let's see.

Q. About five or six hundred?

A. She was about five hundred feet away. I think that wharf is eight hundred feet long.

Q. And how soon after you saw her begin to move, did you notice anything being done by the "Niihau"?

A. The only time I observed the "Niihau" was when she got in the second position, her appearance out in that vicinity making this maneuvering of dropping her anchor.

Q. You have reference to the position she was in at the time she was pulling the "Halcyon" off the beach, as you say?

A. The first position I saw her to the second position.

Q. That was the first time you noticed her?

A. That I noticed the "Niihau," yes.

Q. How long a time was that after you say the "Halcyon" begin moving, begin dragging?

A. I should think about half an hour.

(Testimony of A. S. Cantin.)

Q. Then the "Niihau" moved over directly in the same direction that the "Halcyon" was drifting, was dragging?

A. No, she moved over so that she was ahead of the "Halcyon." She had to make that turn to get ahead of the "Halcyon" to drop her anchor.

Q. Did she drop her anchor there?

A. She dropped her anchor after she got into the position ahead of the "Halcyon."

Q. After that did she make any maneuver?

A. The "Niihau" was trying to get a second anchor out. She was forging ahead, trying to get in a position so she could get the [372] other anchor ahead of her so the two anchors wouldn't get tangled up.

Q. Then she finally dropped the second anchor?

A. Yes, sir.

Q. And that's the position she was in at the time she pulled the "Halcyon" off?

A. No, she backed up. Then after she dropped the second anchor she backed up towards the beach.

Q. That is to tighten up on the chains?

A. They pulled in on the chains and got in the second position of the "Niihau" as I've marked it there.

Q. Now, then, from the time that the "Niihau" was in its position at this last place that you referred to with her chains paid out until the time that she began to pull off the "Halcyon," how long a time elapsed?

A. It didn't seem to me to be more than about

(Testimony of A. S. Cantin.)

five or ten minutes. She had a boat alongside of her. They were putting line into this boat. As the "Niihau" was backing out the boat's crew was getting the line ready and the minute she got into the second position of the "Niihau" this boat shot right off towards the "Halcyon."

Q. Did you see any flags hoisted on the "Halcyon"?

A. The only time I saw a flag hoisted was when she went on the beach.

Q. Was that before or after this boat went out with the line?

A. That was after. The flag was up when the boat started from the steamer.

Q. How long a time elapsed from the time that you first saw the "Halcyon" dragging, that is shortly after seven o'clock until that little boat started out with the line to her?

A. I should think probably about two hours, in that neighborhood.

Q. How long a time after the "Niihau," after you first observed [373] the "Niihau" starting for its second position until she sent out a line? That was about an hour and a half, wasn't it?

A. Well, I didn't get the time on that. Let's see, I didn't notice that.

Q. Well, let me see if I can assist you. You said that it was about a half hour after you saw the "Halcyon" begin to drag until you observed the "Niihau" start for the second position? A. Yes.

Mr. WARREN.—Just a moment. The witness

(Testimony of A. S. Cantin.)

hasn't said that he noticed the "Niihau" at her second position.

Mr. RUSSELL.—Did you testify before that it was a half hour from the time you first saw her dragging until the "Niihau" was at her second position?

A. No, sir, it was about a half an hour elapsed between the first and second position of the "Halcyon."

Q. Didn't you testify that it was about a half hour from the time you first saw the "Halcyon" dragging until the time when you first observed the "Niihau" start for the "Niihau's" second position?

A. Well, it is about thirty or forty minutes.

Q. About thirty or forty minutes?

A. I noticed that time that the "Halcyon" got into that position, then I noticed that this steamer was making that curve to drop her anchors.

Q. How long a time did it take from the time you first observed the "Niihau" start until she dropped her anchors there, that is, how long a time between the time you first saw the "Niihau" start for its second position until she had dropped her anchors down?

A. Until she had dropped her anchors down?

Q. Yes.

A. Must have been three-quarters of an hour or an hour.

Q. And then, how soon after she had her anchors down was it [374] that this boat started, shortly after?

(Testimony of A. S. Cantin.)

A. The boat started out when the "Niihau" got into her second position near the beach there.

Q. About how long after she got into her second position?

A. Oh, it didn't seem to be more than fifteen or twenty minutes, I shouldn't think.

Q. The steamer's boat was alongside the "Niihau" before the "Niihau" had its both anchors down?

A. No, the only thing that I observed the boat was, just before she got into her second position there I could see the nose of the boat on the port side. The boat was on the other side of the steamer to me.

Q. So that the boat was already down when she tightened up on her anchors, the second position?

A. Oh, I don't know how long a time the boat was down.

Q. What are you doing now?

A. I'm working for the Hawaiian Dredging Company.

Mr. RUSSELL.—That's all.

The COURT.—Mr. Cantin, what exactly is the second position as you've described it of the "Niihau," is it at the time she dropped both anchors down or is it after she had paid out her anchors and gone nearer to the "Halcyon"?

A. The second position would be just about the time she left after paying this chain out.

Q. Did you notice how soon after that she commenced to tow?



(Testimony of A. S. Cantin.)

A. Well, it is pretty hard to tell the exact time, it wasn't a very long time.

Q. She probably didn't commence to tow until she got her anchors paid out?

A. No, she didn't start to tow until she got into position, her anchors out and her chain paid out.

Q. Did you notice how long it took for her to get a line aboard the "Halcyon" after the boat started?  
[375]

A. I should think about ten or fifteen minutes, it was done very quickly.

Q. Was it breaking at the position where the "Halcyon" was lying at all? Was she in the surf?

A. She was right in the surf when she was on the beach.

Q. Was the surf breaking to windward of her at all on the sea side of her?

A. It didn't seem to be breaking at the bow, it was breaking about amidships as near as I can recollect.  
The COURT.—That's all.

**Testimony of L. Paulos, for Libellant.**

Direct examination of L. PAULOS, a witness on behalf of libellant, called and sworn.

Mr. WARREN.—Q. Mr. Paulos, on January 12th, 13th and 14th of last year, 1914, where were you employed?

A. I was chief engineer aboard the steamer "Nii-hau" belonging to the Inter-Island Steam Navigation Company at Hilo.

Q. And have you any personal knowledge of the

(Testimony of L. Paulos.)

operations of the "Niihau" to assist the schooner "Halcyon"? A. Yes, sir.

Q. Now, can you tell us something of the movements of the "Niihau" that morning?

A. Yes, sir.

Q. Approximately of the time she began her work?

A. We was going out the first place with the "Niihau" that morning, sir, about quarter to five. At four o'clock the purser of the ship, he came off, he was sleeping ashore. He told the captain that the schooner "Halcyon" was ashore on the Waiakea River, in the mouth of the Waiakea River.

Mr. RUSSELL.—Did you hear it?

A. No, he told the captain. The captain told me to get ready with my engines.

Mr. RUSSELL.—I move to strike. [376]

A. Captain came to me four o'clock to get ready with my engines which I was. We started to move to the "Halcyon" between four and half-past four; I got the last full speed bell; he had a line on her. About six-fifty or seven o'clock the line parted. We got the schooner well off the river and over in good anchorage.

Q. Where were you all this time?

A. I was aboard the ship by the engine-room. My assistant was down below and I was down below too on deck once in a while.

Mr. RUSSELL.—I move that that portion of the witness' testimony as to any distance be stricken because it does not appear that he knows of his own

(Testimony of L. Paulos.)

knowledge, of his own observation—

The COURT.—He says he was on deck part of the time.

A. While we was towing we got the full speed bell, half-past four we was towing to six-fifty or seven o'clock, about there the line parted. The schooner was a good deal off the river there and she was over in the bay. We drop our anchors and stand by her and pull our broken line in. She was hung on to her own anchor, I should say about ten minutes until we got the line aboard again, then she started drifting to the beach.

Q. What started to drift?

A. The schooner. The captain told me we start to move around again to give her line. We pick up our anchors and we move around. By the time we move around the schooner was pretty well up to the beach.

Q. How long did it take for you to pick up your anchors?

A. We started to pick up the anchors from about twenty minutes, half-past seven, about quarter to eight; eight o'clock we had the line on the schooner again; the schooner was pretty well up to the beach. We turn around, drop our anchors, paid out [377] seventy-five fathoms of chain, all the chain we had and backed up to the schooner; got our line fast to him and we start to turn about eight o'clock, eight ten full speed ahead again. About I should judge, about quarter to nine, nine o'clock, we had it pretty well off to a safe anchorage and we dropped our an-

(Testimony of L. Paulos.)

chors and held our line to the schooner until seventy-three the next morning, the 14th of January.

Mr. WARREN.—Cross-examine.

Cross-examination.

Mr. RUSSELL.—Q. When you first *start* to tow her, that morning? A. Yes, sir.

Q. That was, say at four-thirty?

A. Four-thirty.

Q. How long did it take to get a line on her, do you remember?

A. It takes from four o'clock to four-thirty.

Q. And then when you started the "Halcyon" wasn't on the rocks, was she at that time?

A. It was pretty dark, I could not see where she was, it was a very dark night.

Q. She responded quite readily to the tow?

A. Sir?

Q. She answered to the tow right away?

A. Yes, she was going with us when we went at full speed ahead.

Q. When you started to tow her at four-thirty in the morning, just as soon as you got your line taut, you went full speed ahead?

A. We got a strain, I took the full speed bell, that was 4:30.

Q. Just as soon as you got the line, did you go ahead? A. Went ahead full speed.

Q. And did the "Halcyon" follow?

A. She followed till about seven o'clock; six-thirty or seven, [378] then we parted our line.

(Testimony of L. Paulos.)

Q. Now, you were proceeding right along from four-thirty up to six-fifty say? A. Yes, sir.

Q. Then, that was the time that the line parted?

A. Yes, sir.

Q. And did you look at the "Halcyon" at that time? A. Yes, sir.

Q. And you saw her drop anchor? A. Sir?

Q. Did you see her drop anchor?

A. The anchor was down; we was pulling her and her anchor too.

Q. How do you know that?

A. Because I could see when the daylight came her chain was down and her anchor was down.

Q. And then did you watch her right along from that time?

A. Well, once in a while I saw what we were doing and I was giving a rest to my assistant down below too.

Q. Were you watching her for any particular purpose?

A. I was watching her, see if towing her any.

Q. What's that?

A. I was watching her to see if we were towing her any or not.

Q. You watched to see whether or not she was standing still?

A. Exactly. She was following us as we were towing.

Q. Were you with the captain at the time?

A. No, sir, captain is up on the bridge, I am down below.

(Testimony of L. Paulos.)

Q. Did you see her start to drift?

A. What do you mean, after we broke our line?

Q. Yes.

A. It was about twenty minutes past seven.

Q. That was perhaps an half hour afterwards?

A. Seven o'clock we broke our line, twenty minutes after.

Q. You said you broke your line at six-fifty.

A. Six-fifty or seven o'clock.

Q. Then about seven-twenty she started to drift again? [379]

A. She started to drift again.

Q. Then the captain gave you certain orders?

A. Captain told me we'll have to give her line again.

Q. How far were you from the "Halcyon" at that time? A. When she started to drift again?

Q. Yes.

A. Well, we was from two hundred to two hundred and fifty feet, of course I haven't got the dimensions exactly but I should judge about that.

Q. The "Niihau" was at anchor at that time?

A. As soon as we broke the line we drop our anchors and we was standing by.

Q. The "Halcyon" was drifting very slowly, wasn't she?

A. She was started to drifting, she was drifting gradually. We picked up our anchors and got her again.



(Testimony of L. Paulos.)

Q. There wasn't any line sent out to her at that time?

A. No, we just picked up the broken line; we had it on board. By the time we got the line aboard the ship she was drifting again.

Q. When the captain said that he'd have to give her another line he didn't send another line?

A. We picked up our anchors and go around there; by the time we got around there she was on the beach.

Q. What would have prevented a line being sent to the "Halcyon" from that position?

The COURT.—From which position?

Mr. RUSSELL.—From the position she was in when you first saw the "Halcyon" dragging.

A. Because we didn't have a line, she was drifting far away from us then.

Q. She wasn't drifting fast?

A. She was drifting pretty gradually. We didn't have a line [380] long enough to reach her from that position. We had to pick up our anchors and go around her.

Q. If you were only two hundred and fifty feet away from her why couldn't you have had line enough to reach her? Was it because she was drifting so fast?

A. We was two hundred and fifty feet when we broke our line. When we got our broken line probably five or six hundred feet away from her, I don't know exactly how much she drifted away. She was pretty near to the beach.

(Testimony of L. Paulos.)

Q. You got around ahead of the "Halcyon"?

A. Yes, we went around and we dropped our anchors and paid out seventy-five or ninety fathoms of chain on both anchors and backed up to the "Halcyon" and gave her another line again. About eight o'clock we started towing her again full speed ahead and about nine or ten we had it out in a safe anchorage and we dropped our anchors and we stayed there until January 14, seven-thirty with a line to the schooner "Halcyon."

Q. How long a time did it take from the time that you left your position at seven-thirty until you dropped anchor the next time?

A. That took about forty minutes, forty to fifty minutes till we had a line on board ready to tow.

Q. Till you had your line aboard where?

A. On the schooner "Halcyon."

Q. It took how long?

A. About fifty minutes, from forty to fifty minutes.

Q. And you say you started to tow the "Halcyon" at what hour?

A. The second time from the beach between eight and ten past eight, between that time.

Q. You're quite sure about that? A. Sir?

Q. You're quite sure about that?

A. Pretty sure, yes.

Q. You haven't your log-book here? [381]

A. No, sir. I didn't put this in the log-book.

Q. You didn't note in the log-book the time that you started towing?

(Testimony of L. Paulos.)

A. From the time we started to assist her to the time we finished I got that in the log-book. I put down working on schooner "Halcyon" from four-thirty to fifteen past nine finished.

Q. So that you're relying about your recollection?

A. Yes, sir.

Q. You say that it was only forty minutes or about forty minutes from the time that you—

A. The second time.

Q. The time that you began to heave up anchor until you started to tow?

A. Yes, sir, about forty or fifty minutes.

Mr. RUSSELL.—That's all. Oh, just a moment. This forty minutes or so was sufficient time was it to heave up the anchor and make the anchor, *the* maneuver over to her position?

A. Between forty and fifty minutes.

Q. It could be done in forty minutes?

A. It could be done, yes.

Mr. RUSSELL.—That's all.

Mr. WARREN.—On behalf of the libellant, your Honor, I rest our case.

Mr. RUSSELL.—The respondent rests also.

I hereby certify that the foregoing is a full, true and correct transcript of my shorthand notes in the above-entitled cause.

O. SOARE,  
Official Reporter.

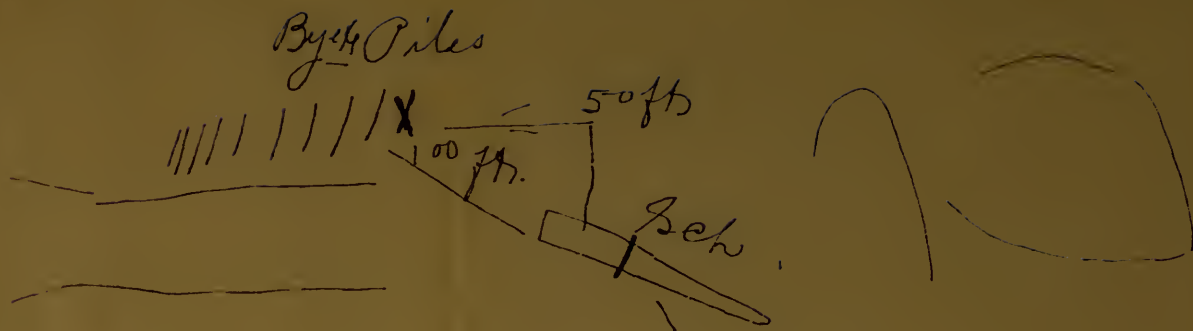
Honolulu, T. H., October 8, 1915.

482 *The American Schooner "Halcyon" et al. vs.*

[Endorsed]: No. 139. (Title of Court and Cause.)  
Transcript of Testimony. Filed Dec. 7, 1915. F. L.  
Davis, Clerk. By (Sg.) Wm. L. Rosa, Deputy  
Clerk. [382]

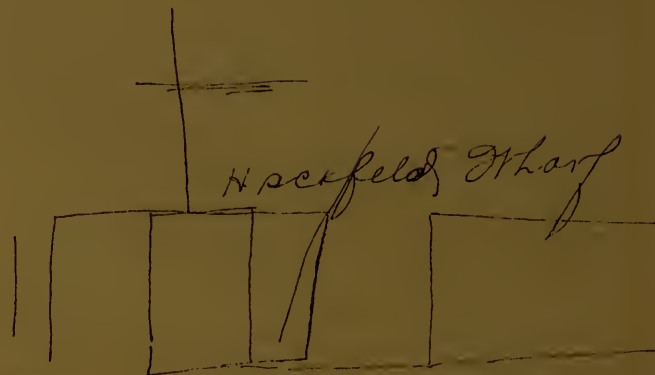
Libellant Ex A

8/17/15



Made by H. P. Morton.

[Endorsed]: 12. #139. In the United States District Court, Territory of Hawaii. Inter-Island Steam Navigation Co., Ltd., etc., vs. The American Schooner "Haleyon," Her Tackle, etc. Libellant's Exhibit "A"—H. P. Morton. Filed Aug. 17, 1915, at — o'clock and — minutes — M. A. E. Murphy, Clerk. By F. J. Davis, Deputy Clerk.



# LIBELLANT'S EXHIBIT "B"

[Endorsed]: 15. #139. Territory of Hawai.  
Inter-Island Steam Navigation Co., Ltd., vs. The  
American Schooner "Halcyon." Libellant's Ex-  
hibit "B"—Captain Bruhn. Filed Aug. 17, 1915, at  
— o'clock and — minutes — M. A. E. Mur-  
phy, Clerk. By F. J. Davis, Deputy Clerk.

Halcyon  
#4

Halcyon  
#3

nihau  
#14

Halcyon  
#2

#0

#0

nihau  
#21

#10

Halcyon  
#1

Files

River

nihau  
#3

nihau  
#5

R.R. Wharf

Old  
Track  
Whs



**Libellant's Exhibit "C"—Surveyor's Report of  
Schooner "Halcyon."**

Surveyor's Report on condition of the American Schooner "Halcyon." Survey called for by its Master A. T. H. Olson on Jan. 27th, 1914, to decide the seaworthiness of said Schooner.

Beginning in the For Peak, we found the Breast Hooks drawn from Beams above, showing an open space between End of Breast Hooks and Beams, causing looseness and hard working all around the Bow; also causing the water to enter and found the skin rotten and watersoaked. On working towards the Stern we found the timbers in wake of Channels, both around Bolts holding Chainplates, and also floor timbers to be in such a rotten state, as to enable us to drive a Crowbar clean through them without the slightest exertion.

We also found Kelson and Sister Kelson in as nearly as bad condition as the timbers. The Bolts, fastening Kelson, protruding, rotten wood all around them, thereby loosing all support. The skin in general, but particularly abreast of Chainplates and alongside the Kelson throughout the whole length of Schooner was found in a rotten and watersoaked condition.

On surveying around the upper Deck we found the Mizzen Mast, about 8 feet above the Main Deck, rotted away to the extent of half its Diameter; in other words, 11 Inches from Surface towards Center. The full Diameter of Mizzen Mast being 22 Inches.

The Rail and Stanchions around Quarter Deck and Stern partly broken and Chocks on port Quarter completely gone.

Channelplates on Starboard For and Main Rigging totally gone, on Mizzen partly broken. This state of affair would, in case of ship rolling and pitching, cause considerable slacking and banging of rigging, and thereby endanger the Masts.

Rail and Buffalo, including Chocks, from Night Heads to about 10 feet aft on the Starboard Bow, completely gone; also Gear for holding Bowsprit and Jibboom in a very bad condition, being at present secured by a small chainlashing and turnbuckle.  
[348a]

Regarding Mooring Equipment we found only 1 Anchor with 60 fathoms of Chain. The Windlass, being an old-fashioned one, worked with Brakes, which necessitates the use of about 15 fathoms of Chain inboard, leaving only about 45 fathoms available in the water. On looking over the hull outside we found the planking in a poor condition, but more so around Chinplate Bolts and Butts.

Concerning the hull below the water line we were not able to form a positive opinion, as the sending down of a Diver was thought unnecessary by the Captain. In view of the fact, that the Schooner "Halcyon," when entering the Hilo harbor, struck the Reef at three different times, lost part of her Keel and made water at the rate of 10 Inches per hour alongside a Wharf in smooth water, we are strongly led to believe, that the hull below the water

line must be in such a bad condition, as to render the vessel unseaworthy. The mean draught of the Schooner, when leaving the coast with a full load of Lumber was 14 feet and 1 inch, at the time of survey 8 feet 4 inches. The Schooners Pumps are of a good make, but as original parts of them have been substituted by inferior material, they consequently do not work to their full capacity. The amount of water made between Soundings, taken at 12:30 P. M. Jan. 28th, was found to be one half of an inch.

The reason for this remarkable small amount of water, the vessel made after discharging her Cargo and during the 24 hours her pumps were sealed, we consider partly due to her smaller draught and in a great measure to the following circumstances.

On Jan. 9th, after the Schooner had been tied up to the wharf, she leaked in such a manner, that in spite of pumping day and night, six feet of water were found in her hold on Saturday Jan. 10th.

This additional weight settled her for several feet in the mud. This mud, the Schooner rested in during four Tides, makes us believe, to have filled up her open seams temporarily.

From Jan. 4th until Jan. 9th, while at sea the "Halcyon" made water at [385] the rate of four and a half inch per hour. On Jan. 9th, after striking the Reef, while entering the Hilo harbor she made water at the rate of 10 inches per hour for three successive days. The following days, as the Cargo was being discharged and the vessel came up, the influx of water decreased gradually.

Capt. Olson, after being advised to have the hull below the water line examined, on Jan. 29th employed a diver for this purpose, the result of which please find in Divers report attached to this document.

As the Diver could not make a thorough examination of the Schooners, bottom, on account of a leaking Diving Suit, we do believe a greater damage existing than stated in his report.

In conclusion we wish to say, that we do not consider the Schooner "Halcyon," in her present condition, fit for a voyage of over 2000 miles to the Pacific Coast.

Hilo, Hawaii, Jan. 29th, 1914.

Surveyors:

(Signed) J. F. WIKANDER.

(Signed) Capt. A. DUVAL.

(Signed) Capt. F. MOSHER. [386]

# DIVER'S REPORT.

Jan. 29th, 1914.

Schooner "Halcyon."

Entered water at 2:15 A. M. and worked my way to the rudder on the Starboard side and found a piece of the Keel about 5 or 6 feet gone. This piece is about 6 feet forward of the Rudder.

(Signed) GEORGE HAGGERTY,

Diver.

[Endorsed]: No. 139. (Title of Court and Cause.)  
Libellant's Exhibit "C." Filed Aug. 19, 1915.  
A. E. Murphy, Clerk. By (Sgd.) F. L. Davis,  
Deputy Clerk. [387]

**Libellant's Exhibit "D"—Final Report of Board of  
Survey on Schooner "Halcyon."**

Hilo, Hawaii, April 9th, 1914.

**FINAL REPORT OF BOARD OF SURVEY.**

After being called by Mr. J. W. Russel, attorney for Charles Nelson & Co. to make a final survey of the Schooner "Halcyon," we now find, that the following repairs have been made.

Calking outside in wake of Chain Plates and Butts, where mostly needed. Mizzen Mast fished, and channel plates repaired. Head gear put in a satisfactory condition. Furthermore, we found the lost Anchor and Chain replaced, which makes the mooring equipment complete.

According to Mr. Hartman's Diving report we understand the bottom of the Schooner "Halcyon" to be in a better condition than could have been expected.

We therefore consider the Schooner "Halcyon," in her present state, reasonably safe to undertake the voyage to the Pacific Coast.

Board of Survey:

F. MOSHER.

J. F. WICKANDER.

A. DUVAL. [388]

**REPORT OF DIVER ON SCHOONER  
"HALCYON."**

At the request of the Hilo Mercantile Company, Ltd., as agents for the schooner "Halcyon," I have this day examined the bottom of said schooner and beg to report as follows:—



Amidships on port side there is a piece of sheeting 1 inch by 4 inches, about 8' long torn off her keel; on starboard side, a little further aft, a piece about the same size, 3' long is torn off her keel. The shoe is gone from the stern post to mizzen rigging, or about 20 feet. Her rudder and stern post are in perfectly good condition. Her planking with the exception of a few minor scratches have not been touched at all.

My opinion having been asked by Mr. J. W. Russel as attorney for the owners as to the seaworthiness of the vessel, I can say that she is perfectly seaworthy as far as her bottom is concerned.

Respectfully submitted,

(Sgd.) A. HARTMAN.

[Endorsed]: No. 139. (Title of Court and Cause.)  
Libellant's Exhibit "D." Filed Aug. 19, 1915.  
A. E. Murphy, Clerk. By (Sgd.) F. L. Davis,  
Deputy Clerk. [389]

**Libellee's Exhibit No. 3—Marine Note of Protest.**

**MARINE NOTE OF PROTEST.**

Territory of Hawaii,  
Hilo, County of Hawaii,—ss.

On this fifteenth day of January in the year of Our Lord Nineteen Hundred and fourteen, before me, George H. Williams, a Notary Public in and for the Fourth Judicial Circuit of the Territory of Hawaii, personally appeared J. A. T. Olsen, Master of the Schooner called the "Halcyon," of San Fran-



cisco, of the burden of 278 tons, or thereabout, and on oath saith:

That on to wit, the fourth day of December last past, he sailed in and with the said vessel from the Port of Eureka laden with Lumber, and arrived in said vessel at Hilo, Hawaii, on the ninth day of January, 1914; that at 7 P. M. on Monday evening, January 12th, 1914, being moored at the wharf, the Starboard head line chock carried away in a heavy squall, splitting the rail for a distance of 10 feet; strong breeze freshening to a heavy gale with rain squalls; at 9:30 P. M. the head line carried away at the Pawl bitt, and the vessel dropped down on top of the Schooner "Ka Moi," which was moored astern of us alongside of wharf, carrying away his flying jib boom jumper stay, also smashing our small boat and after taffrail, and breaking the davit fastenings. The starboard anchor was let go, but through poor holding ground the anchor failed to hold, and the vessel was gradually drifting ashore. Our original off shore stern breast line was hauled taut, and another 6" manilla line run out to the same buoy, when the first breast line carried away. 5 A. M. Tuesday January 13th: The flare up torch was then used to attract the attention of the Steamer "Niihau" and she came and anchored close to us, sending a 6" manilla line, which was made fast to the foremast, and she started towing on us, but on attempting to weigh anchor, our port anchor chain parted on the windless, losing the anchor and 35 fathoms of chain.

At 6 A. M. the steamers line carried away, and

the Schooner let go her starboard bower wit 25 fathoms of chain in 18 feet of water in poor holding ground, and at 8 A. M. it was seen that the vessel was drifting ashore fast. At 9 A. M. Tuesday morning the Steamer "Niihau" again got 2 hawsers fast aboard and with the arrival of the Harbor Pilot the vessel was towed out to a safe anchorage in  $4\frac{3}{4}$  fathoms of water. At 10 A. M. dropping the Starboard bower, and paying out to 45 fathoms chain at the waters edge, and having a 6" manilla hawser from the Steamer securely fastened on board as a precaution against drifting again.

Weather at this time moderating, clear at times and a heavy ground swell running. At this time the schooner is anchored on the bow anchor and riding easy.

Said Master of the "Halcyon" now enters with me the said Notary, in due form of law, this, his Protest, to serve him as occasion may require, reserving to himself the right to extend the same in time and place convenient.

(Sgd.) J. A. T. OLSEN,  
Master Schooner "Halcyon."

Given under my hand and seal and duly sworn to, the day and year first above written.

[Seal] (Sgd.) GEO. H. WILLIAMS,  
Notary Public, Fourth Judicial Circuit, Territory of  
Hawaii.

[Endorsed]: No. 139. Libellee's Exhibit 3. Capt.  
Olson's Protest. [390]

**Minutes of Court—December 16, 1915.**

(PROCEEDINGS AT DECISION.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Thursday, December 16, 1915, Vol. 9, Part 2, Folio 982.

[Title of Court and Cause.]

The within cause being called on this day for decision and none of counsel being present, the Court appointed Wm. L. Stanley as proctor for the libellants and R. W. Breckons, proctor for the libellee. Thereafter the Court read and filed its decision awarding \$2,877.28 to the libellants, to which decision acting proctor for the libellee entered an exception and gave notice of appeal. [391]

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[Title of Court and Cause.]

**Opinion.**

December 16, 1915. [392]

ADMIRALTY: Libel *in rem* for Salvage.

L. J. WARREN (of Smith, Warren, Hemenway & Sutton), for Libellant.

J. W. RUSSELL, for Libellee.

In these proceedings for salvage, the undisputed story is as follows:

The libellee had arrived in the Port of Hilo, with a load of lumber, and had begun to discharge her deck-load at the railroad wharf. On the night of the 12th and 13th of January, 1914, as she was lying a little way off the wharf, moored both to the wharf

and to buoys on the port side, a heavy wind came up from the north and caused her to drift, breaking a line attached to the buoy and colliding with a smaller schooner moored near her stern. Either by blue lights or communication by boat with the steamer "Niihau," belonging to the libellant, she suggested assistance. The steamer immediately raised her anchor and came down the wind, near the libellee, and anchored and sent a tow-line by boat to the libellee, which then had drifted close to the shore, near the mouth of the Wailoa River, the shore on the east side of the mouth of that river being rocky and that on the west side being sandy. The line was connected and the "Niihau" towed the libellee out of this dangerous position to a place out in the bay, beyond the end of the railroad wharf; whereupon the tow-line broke and the libellee, which had already lost one anchor. [393] dropped the other anchor, the "Niihau" also anchoring.

In a few minutes it was evident to the master of the "Niihau" that the libellee was drifting again, this time toward the sandy shore on the west side of the entrance to the Wailoa River. As she approached this shore the "Niihau" changed her position and came close to her, reaching a position a little way to the windward. The master of the schooner, finding himself near to the breakers and still drifting, raised a signal for assistance, and about this time a boat with a tow-line left the "Niihau" and came down the wind on a surf-line from the steamer, and upon reaching her delivered the end of the tow-line, which the crew of the libellee fastened to her

bow; the boat then returning to the steamer and bringing another and larger line which was also fastened to the libellee. The libellee was then pulled out of this dangerous position to a safe place in the harbor, where she anchored, and, her one anchor having proved insufficient, the "Niihau" held on to her during the rest of the day and the succeeding night with a line.

There was apparent effort on the part of the libellee to show that she was in no special danger on either occasion and that the master of the steamer "Niihau" was not prompt in rendering assistance on the second occasion of relief. I am convinced from the evidence that on both occasions the schooner was in great danger of going ashore and of becoming a total loss if she had gone ashore. The wind was blowing a gale, variously estimated from twenty-five to forty miles an hour, the weight and character of the testimony favoring the latter speed. The first aid given was in the darkness of the night, the circumstances creating some danger to the salving steamer, in that she had to proceed between the railroad wharf and unlighted buoys one hundred [394] and fifty or two hundred feet away from the wharf, and anchor and send out her tow-line and proceed into the bay with the libellee in tow. The maneuver was successfully accomplished, yet the tow-line parted after the libellee had reached a comparatively safe place; and there is considerable evidence that the parting of the tow-line was caused by friction with one of the afore-mentioned buoys. After the line was attached to the libellee, the "Niihau" sent



a boat to sound alongside of the libellee, on her port side, where they found the depth of the water to be eighteen feet amidship and twelve feet near the stern, showing the libellee to be almost ashore.

The evidence of the captain of the "Niihau" and the members of his crew shows that as soon as those on board noticed that the libellee was drifting again, after her first relief, they immediately began preparations for assisting her, pulling up her anchors and proceeding toward the drifting schooner and dropping her anchors and letting out her chain until the steamer had reached a favorable position for assisting the schooner, getting out a tow-line, coiling it in the boat, and then sending the boat down the wind on a surf-line, with a tow-line for delivery to the schooner. The evidence of the captain and members of his crew that this boat left the steamer before the signals had been raised by the schooner for relief was positive, it appearing from their testimony that the signals for relief were raised while the boat was on the way and had nearly arrived at the schooner.

A point was made by the libellee's counsel that as, according to the evidence, about two hours elapsed between the time of the breaking of the tow-line at the first relief and the delivery of the end of the tow-line to the schooner on the occasion [395] of the second relief, the "Niihau" must have been doing nothing during a part of this time—had perhaps waited for signals of distress before moving. The fact as shown by the testimony of libellee's witnesses, that the boat from the steamer, carrying the tow-line, started almost immediately after the signals were



raised, shows conclusively that the steamer was thoroughly prepared to act and had been engaged for some part of the two hours in making preparations. We have to consider that when her master noticed the schooner was drifting, fifteen or twenty minutes after the tow-line parted, he had to raise his anchors and steam out to the place where he anchored the second time, finding the right position and dropping both anchors, letting out the chain to an extent which would bring him in a favorable position for assisting the schooner, all of which, according to the testimony, took from twenty minutes to half an hour. He then prepared his boat for conveying the tow-line to the schooner, coiling the tow-line of a six-inch size in the boat, fastening that to a four-inch line for giving it sufficient length for handling, and sending the boat in by a surf-line to the ship, negotiating with his boat's crew, who demurred to going without such surf-line. Such preparations might well have occupied an hour and a half, or more; and the testimony in regard to the time elapsed is of such a general character, merely approximating two hours, that, as a basis for inexcusable delay, it does not appeal to me as being very substantial.

The case presents itself to my mind as one of the most satisfactory cases of salvage on the part of the salvors that has appeared in this court. The agents of the libellant, upon being informed of the danger of the libellee, promptly came to her assistance in the darkness of the night, under circumstances of [396] some danger to its steamer, and removed her from her dangerous position to a safe one in the harbor,

or which would have been a safe one if the libellee had been equipped with her two anchors. As soon as the agents of the libellant noticed that the libellee was drifting again they began preparations for her relief, and continued such preparations until they were ready to send her a tow-line the second time, at which time the libellee was in a dangerous position and, without the relief which was given her, was in prospect of becoming a total loss.

I cannot find from the testimony that there was any neglect or inexcusable delay on the part of the libellant's agents. Having once salved the schooner, they understood, or should have understood, that any neglect by which she might have been lost the second time would lose them all claims for remuneration for her first salvage, unless it should absolutely appear that the second danger and final loss was caused solely by the fault of the libellee. The salving methods were the best, and were carried out with skill and courage and resulted in the entire deliverance of the libellee.

In all these operations, there was according to the evidence, considerable danger to the salving steamer, from the possibility of entangling her propeller with tow-lines, in which case she would be helpless if her anchors should fail to hold from any cause, whether from dragging or the parting of the anchor chains.

There was considerable testimony as to the danger of the cargo in case the schooner had gone ashore and had become a loss. As the weather began to diminish in severity during the following night after the salvage, after a period of perhaps [397]

twelve hours or so, it is hard for the Court to say from the testimony what the situation of the lumber would have been if the schooner had been wrecked. The evidence in the case shows that the schooner was old and in a weak condition from age and decay. It is uncertain that the ship would have been so broken up that the lumber would have escaped into the waves, and yet that might have happened. In any case, the danger to the cargo was considerable. If the ship had gone ashore and held together until the storm subsided, twenty-four hours or more afterwards, the removal of the cargo from the hull to the shore would have been attended with very considerable expense.

In view of the circumstances, as shown by the evidence, that the ship was in the greatest danger and was, to my mind, rescued from total loss, and that the danger to her cargo was considerably less, I think a decree awarding libellant one-half of the value of the schooner, the whole value of which has been admitted to be \$1,500; and one-third of the value of the cargo, which had been admitted to be \$6,381.85, would be reasonable. A decree may be entered for \$750, as one-half of the value of the vessel, and \$2,127.28, as one-third of the value of the cargo, totaling \$2,877.28; all costs to be paid by the libellee.

Honolulu, December 16, 1915.

(Sgd.) SANFORD B. DOLE,  
Judge of the United States District Court for the  
Territory of Hawaii.

[Endorsed]: No. 139. (Title of Court and Cause.) Decision of Dole, J. On Libel in rem for

Salvage. December 16, 1915. Filed December 16, 1915. F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow, Deputy Clerk. [397A]

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**Minutes of Court—December 30, 1915.**

(PROCEEDINGS AT PRESENTATION OF  
FINAL DECREE AND ORDER APPROV-  
ING BILL OF COSTS FOR LIBELLANTS.)

(CLEMONS, Presiding Judge.)

From the Minutes of the United States District  
Court: Thursday, December 30, 1915, Vol. 9,  
Part 2, Folio 996.

[Title of Court and Cause.]

On this day came Mr. L. J. Warren of the firm of Smith, Warren & Sutton, proctors for the above libellants and also came Mr. J. W. Russell, proctor for the libellee herein and this cause was called for further disposition. Thereupon and after due hearing the Court allowed libellant's bill of costs and approved and signed the final Decree.

Thereafter the Court fixed the Bond on Appeal at \$500. [398]

*In the District Court of the United States in and for  
the District and Territory of Hawaii.*

IN ADMIRALTY—LAW NO. 139.

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Hawaiian Corporation,  
Owner of the Steamer "NIIHAU," for Itself,  
the Officers and Crew of said Steamer, and  
Other Servants of said Owner,

Libellant,

vs.

The American Schooner "HALCYON," Her Tackle,  
Apparel, Machinery, Boats, Furniture, Appur-  
tenances, Cargo and Freight Money,

Respondent,

J. A. T. OLSEN,

Master and Claimant.

**Decree.**

This cause having come on regularly to be heard before the Honorable Sanford B. Dole as a Judge of this court upon the pleadings and evidence adduced by the respective parties, and said cause having been submitted to the said Sanford B. Dole as such Judge of this court for determination;

And the said Sanford B. Dole as such Judge of this court having duly considered the same and on the 16th day of December 1915, rendered and filed his decision thereon, and thereby having determined that the services rendered to the above-named respondent The American schooner "Halcyon," her tackle, apparel, [399] machinery, boats, furniture, appur-



tenances, cargo, and freight money, by the libellant, Inter-Island Steam Navigation Company, Limited, and the officers and crew of its steamer "Niihau" above named, and other servants of said libellant, were salvage services, entitled to compensation as in said decision and this decree provided:

NOW, THEREFORE, upon motion of L. J. Warren, Esq., of Messrs. Smith, Warren & Sutton, proctors for said libellant, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the libellant, Inter-Island Steam Navigation Company, Limited, for itself and the officers and crew of said steamer "Niihau" and other servants of said libellant, do have and recover from the said respondent the American schooner "Halcyon," her tackle, apparel, machinery, boats, furniture, appurtenances, cargo, and freight money, and that said respondent pay unto the said libellant accordingly, the sum of TWO THOUSAND EIGHT HUNDRED SEVENTY-SEVEN AND 28/100 DOLLARS (\$2,877.28), in lawful money of the United States, with interest thereon from the date hereof until paid at the rate of six per cent per annum, for its own use and in trust for the officers and crew of said steamer "Niihau" and other servants of said libellant, to be apportioned between said libellant and its said officers, crew and other servants as shall by this Court hereafter be directed.

It is hereby ORDERED, ADJUDGED AND DECREED that all costs herein be taxed against the respondent, and that said libellant Inter-Island Steam Navigation Company, Limited, have and re-



cover from the respondent, and that said respondent pay to said libellant for its sole account, the full amount of the costs and disbursements of the libellant herein, hereby taxed at \$305.25. [400]

And it further appearing to this Court that the said American schooner "Halcyon," and her tackle, apparel, machinery, boats, furniture, appurtenances, cargo, and freight money, have been released to the above named J. A. T. Olsen, Master and Claimant in this cause, upon a stipulation in the sum of Four Thousand Dollars (\$4000), dated the 20th day of January, 1914, and signed by the said J. A. T. Olsen on behalf of the owners of said schooner and the shippers of her cargo with the National Surety Company as surety, conditioned that said principal and surety shall abide by and perform the decree of this court, it is hereby further ORDERED, ADJUDGED AND DECREED, that unless this decree (Including costs) shall be satisfied, or proceedings thereon stayed by appeal, within ten days after notice given by the proctors for the libellant to J. W. Russell, Esq., proctor for said respondent and said claimant, of the entry of this decree and the taxation of costs herein, the said surety, National Surety Company, pay to the said libellant the said sum of Two Thousand Eight Hundred and Seventy-seven and 28/100 Dollars (\$2,877.28), hereinabove awarded as aforesaid, with the interest thereon to date of payment, and the libellant's costs taxed as aforesaid, or show cause within five days after the expiration of said period of ten days why execution should not issue against it, its lands, goods and chattels, accord-

ing to said stipulation, to satisfy this decree. In the event of proceedings hereunder being stayed by appeal, the obligation of said surety under said stipulation shall be suspended, to satisfy such decree as shall or may be finally made herein upon mandate on appeal. And upon payment of said sum of \$2,877.28 and costs (or as may be directed by any final decree upon mandate in case of an appeal), the said surety shall stand released from [401] further liability on account of the said stipulation.

Dated at Honolulu, T. H., December 30, 1915.

(Sgd.) CHAS. F. CLEMONS,

Judge of the United States District Court for the Territory of Hawaii.

Approved as to form, and as to signing by Judge Clemons.

(Sgd.) J. W. RUSSELL,  
Proctor for Claimant.

(Sgd.) L. J. WARREN,  
Proctor for Libellant.

[Endorsed]: No. 139. (Title of Court and Cause.) Decree. Entered in J. & D. Book 2 at Folios 660, 661. Filed December 30, 1915. (Sgd.) F. L. Davis, Clerk. [402]

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[Title of Court and Cause.]

**Notice of Entry of Decree.**

To the Respondent in the above-entitled cause and J. A. T. Olsen, Esq., Master and Claimant, and to J. W. Russell, Esq., Proctor for said Claimant:

You will please take notice that on this 30th day

of December, 1915, a decree was made, entered and filed in the above-entitled cause in the form of the copy thereof hereunto annexed and by reference made a part hereof.

Dated Honolulu, T. H., December 30th, 1915.

(Sgd.) SMITH, WARREN & SUTTON,  
Proctors for Libellant.

Receipt of a copy of the above notice and copy of decree is hereby acknowledged this 30th day of December, 1915.

(Sgd.) J. W. RUSSELL,  
Proctor for Claimant. [403]

*In the District Court of the United States in and  
for the District and Territory of Hawaii.*

IN ADMIRALTY—LAW NO. 139.

INTER-ISLAND STEAM NAVIGATION COM-  
PANY, LIMITED, a Hawaiian Corporation,  
Owner of the Steamer "NIIHAU," for Itself,  
the Officers and Crew of Said Steamer, and  
Other Servants of Said Owner,  
Libellant,

vs.

THE AMERICAN SCHOONER, "HALCYON,"  
Her Tackle, Apparel, Machinery, Boats,  
Furniture, Appurtenances, Cargo and Freight  
Money,  
Respondent,

J. A. T. OLSEN,

Master and Claimant.

**Decree.**

This cause having come on regularly to be heard before the Honorable Sanford B. Dole as a Judge of

this court upon the pleadings and evidence adduced by the respective parties, and said cause having been submitted to the said Sanford B. Dole as such Judge of this court for determination;

And the said Sanford B. Dole as such Judge of this court having duly considered the same and on the 16th day of December, 1915, rendered and filed his decision thereon, and thereby having determined that the services rendered to the above-named respondent the American schooner "Halcyon," her tackle, apparel, [404] machinery, boats, furniture, appurtenances, cargo, and freight money, by the libellant, Inter-Island Steam Navigation Company, Limited, and the officers and crew of its steamer "Niihau" above named, and other servants of said libellant, were salvage services, entitled to compensation as in said decision and this decree provided;

NOW, THEREFORE, upon motion of L. J. Warren, Esq., of Messrs. Smith, Warren & Sutton, procutors for said libellant, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the libellant, Inter-Island Steam Navigation Company, Limited, for itself and the officers and crew of said steamer "Niihau" and other servants of said libellant, do have and recover from the said respondent the American schooner "Halcyon," her tackle, apparel, machinery, boats, furniture, appurtenances, cargo, and freight money, and that said respondent pay unto the said libellant accordingly, the sum of TWO THOUSAND EIGHT HUNDRED SEVENTY-SEVEN AND 28/100 DOLLARS (\$2,877.28), in

lawful money of the United States, with interest thereon from the date hereof until paid at the rate of six per cent per annum, for its own use and in trust for the officers and crew of said steamer "Nii-hau" and other servants of said libellant, to be apportioned between said libellant and its said officers, crew and other servants as shall by this court hereafter be directed.

It is hereby further ORDERED, ADJUDGED AND DECREED that all costs herein be taxed against the respondent, and that said libellant Inter-Island Steam Navigation Company, Limited, have and recover from the respondent, and that said respondent pay to said libellant for its sole account, the full amount of the costs and disbursements of the libellant herein, hereby taxed at \$305.25. [405]

And it further appearing to this Court that the said American schooner "Halcyon," and her tackle, apparel, machinery, boats, furniture, appurtenances, cargo, and freight money, have been released to the above-named J. A. T. Olsen, Master and Claimant in this cause, upon a stipulation in the sum of Four Thousand Dollars (\$4,000), dated the 20th day of January, 1914, and signed by the said J. A. T. Olsen, on behalf of the owners of said schooner and the shippers of her cargo with the National Surety Company as surety, conditioned that said principal and surety shall abide by and perform the decree of this court, it is hereby further ORDERED, ADJUDGED AND DECREED, that unless this decree (including costs) shall be satisfied, or proceedings thereon stayed by appeal, within ten days after no-



tice given by the proctors for the libellant to J. W. Russell, Esq., proctor for said respondent and said claimant, of the entry of this decree and the taxation of costs herein, the said surety, National Surety Company, pay to the said libellant the said sum of Two Thousand Eight Hundred Seventy-seven and 28/100 Dollars (\$2,877.28), hereinabove awarded as aforesaid, with the interest thereon to date of payment, and the libellant's costs taxed as aforesaid, or show cause within five days after the expiration of said period of ten days why execution should not issue against it, its lands, goods and chattels, according to said stipulation, to satisfy this decree. In the event of proceedings hereunder being stayed by appeal, the obligation of said surety under said stipulation shall be suspended, to satisfy such decree as shall or may be finally made herein upon mandate on appeal. And upon payment of said sum of \$2,877.28 and costs (or as may be directed by any final decree upon mandate in case of an appeal), the said surety shall stand released from [406] further liability on account of the said stipulation.

Dated at Honolulu, T. H., December 30, 1915.

(Sgd.) CHAS. F. CLEMONS,  
Judge of the United States District Court for the  
Territory of Hawaii.

Approved as to form, and as to signing by Judge  
Clemons.

(Sgd.) J. W. RUSSELL,  
Proctor for Claimant.

(Sgd.) L. J. WARREN,  
Proctor for Libellant.



[Endorsed]: No. 139. (Title of Court and Cause.)  
Notice of Entry of Decree. Filed Dec. 31, 1915.  
F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow,  
Deputy Clerk. [407]

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[Title of Court and Cause.]

**Notice of Appeal.**

To the Inter-Island Steam Navigation Company,  
Limited, a Hawaiian Corporation, Libellant, in  
the Above-entitled Cause, and to Messrs. Smith,  
Warren & Sutton, Its Proctors:

You and each of you are hereby notified that the  
American schooner "Halcyon," respondents in the  
above-entitled cause, and J. A. T. Olsen, its master  
and claimant, intend to and hereby do appeal to the  
United States Circuit Court of Appeals for the  
Ninth Circuit from the final order and decree of the  
District Court of the United States in and for the  
District and Territory of Hawaii, made and entered  
in the above-entitled cause on the 30th day of De-  
cember, 1915; and you are hereby further notified  
that said respondent and claimant intend to intro-  
duce new proofs in said appeal.

Honolulu, Hawaii, December 31st, 1915.

(Sgd.) J. W. RUSSELL,

Proctor for Respondent and Claimant. [408]

[Endorsed]: No. 139. (Title of Court and Cause.)  
Notice of Appeal. Service of a Copy of the Within  
Notice of Appeal on December 31st, 1915, is hereby  
admitted. Smith, Warren & Sutton. By (Sgd.)

E. W. Sutton. Filed December 31st, 1915. F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow. [409]

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[Title of Court and Cause.]

**Bond for Costs on Appeal.**

KNOW ALL MEN BY THESE PRESENTS, that we, J. A. T. Olsen, as principal, and E. F. Nichols, as surety, are held and firmly bound unto the Inter-Island Steam Navigation Company, Limited, a corporation, in the sum of two hundred and fifty dollars (\$250), to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3d day of January, 1916.

WHEREAS, a decree was lately rendered and entered in the above-entitled court and cause in favor of the said Inter-Island Steam Navigation Company, Limited, and against the above-named respondent and the said J. A. T. Olsen, as master [410] and claimant, and the said respondent, and said claimant having filed in the aforesaid court their notice of appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit;

NOW, the condition of the above obligation is such that if the said appellants shall prosecute the said appeal to effect, and shall pay all costs that may be awarded to the appellee, if such appeal is not sustained, then this obligation shall be void, otherwise

to remain in full force and effect.

J. A. T. OLSEN. (Seal)

By (Sgd.) J. W. RUSSELL,  
His Agent and Attorney.  
(Sgd.) E. F. NICHOLS,  
Surety.

Approved as to form.

(Sgd.) SMITH, WARREN & SUTTON,  
Proctors for Appellee.

To the Inter-Island Steam Navigation Company,  
Limited, Libellant Herein, and to Messrs. Smith,  
Warren & Sutton, Its Proctors:

Please take notice that the foregoing is a copy of  
the bond for costs on appeal filed herein, and that the  
address of E. F. Nichols, the surety therein men-  
tioned is the City of Hilo, County and Territory of  
Hawaii.

(Sgd.) J. W. RUSSELL,  
Proctor for Appellants.

[Endorsed] No. 139. (Title of Court and Cause.)  
Bond for Costs on Appeal. Filed Jan. 4, 1916.  
(Sgd.) F. L. Davis, Clerk. [411]

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[Title of Court and Cause.]

### **Assignment of Errors.**

Now come the American schooner "Halcyon,"  
libelee, and J. A. T. Olsen, master and claimant, ap-  
pellants in the above-entitled cause, and say that  
in the record, opinion, decision, decree and proceed-  
ings in the above-entitled matter in the above-en-  
titled court there is manifest and material error, and

said appellants now make, file and present the following assignment of errors upon which they rely, to wit:

## 1.

That the award of \$2,877.28 in favor of libellant was and is not warranted by the evidence and was and is excessive and erroneous. [412]

## 2.

That the Court erred in holding and deciding that the schooner "Halcyon" was in a dangerous position at the time immediately prior to the first tow by the steamer "Niihau," and that the position from which the said steamer so towed out the said schooner was a dangerous one.

## 3.

That the Court erred in holding and deciding that upon said occasion of the first tow the said schooner "Halcyon" was in great danger of going ashore, and in not holding that on said occasion, by reason of the said schooner being held to the buoy and by its anchors and not drifting, the said schooner was in no danger of so going ashore.

## 4.

That the Court erred in holding and deciding that the steamer "Niihau" was subjected to danger while engaged in the operations attending either the first or second tow of the schooner "Halcyon," and said steamer "Niihua" ran any risks while so engaged.

## 5.

That the Court erred in holding and deciding that the salving methods of the steamer "Niihau" were the best, and were carried out with skill and courage

and resulted in the entire deliverance of the libellee, and in not holding that the necessity for the salving of the libellee after the said schooner commenced drifting from the position to which the schooner was first towed arose from and was the result of the carelessness and negligence of the steamer "Niihau" in leaving the said schooner in such a dangerous position.

6.

That the Court erred in holding and deciding that the point to which the said schooner was first towed by the said [413] steamer was a "comparatively safe place," and in not holding that said place afforded an unsafe and dangerous position to anchor said schooner.

7.

That the Court erred in failing to find gross negligence and lack of skill on the part of the libellant and of its agents in failing and omitting to tow the said schooner to a point farther out in the bay, upon the occasion of the first tow, than to the point at which the said schooner was left, and in failing and omitting to stand by until the schooner was safely anchored.

8.

That the Court erred in failing to find gross negligence and carelessness on the part of the libellant and its agents in not observing that the said "Halcyon" was drifting from the point to which the said schooner was first towed until after twenty minutes had elapsed from the time the said schooner first commenced to so drift.

9.

That the Court erred in holding and deciding that the steamer "Niihau" was prompt in rendering assistance to the said schooner on the occasion of the second tow, and in not holding that the said steamer was not prompt in rendering such assistance and delayed purposely in order to enhance libellant's claim to a salvage award.

10.

That the Court erred in not forfeiting any award to which libellant would have been otherwise entitled, by reason of the said gross negligence and carelessness of the steamer "Niihau" and its officers and crew, and their said misconduct.

11.

That the Court erred in holding and deciding that the services [414] performed by the libellant were of a salvage nature and character, and in failing to hold that such services were performed solely pursuant to a contract for the towage of the said schooner.

12.

That the Court erred in rendering decision in this cause before the final submission of briefs and argument, and before the expiration of the time granted to counsel for the filing of briefs and argument.

13.

That the Court erred in making, rendering and entering a final decree in this cause in favor of libellant, and in not making, rendering and entering a final decree in favor of the claimant.

In order that the foregoing assignment of errors



may be and appear of record, said appellants herein file and present the same to said court, and pray such disposition to be made thereof as is in accordance with law and the statutes of the United States in such case made and provided, and said appellants pray the reversal of the above-mentioned decree, and that such judgment be entered as ought to have been rendered by the District Court of the United States for the Territory of Hawaii.

Dated at Hilo, Hawaii, January 25th, 1916.

THE AMERICAN SCHOONER "HAL-  
CYON," and J. A. T. OLSEN,

Master and Claimant,

Appellants.

By J. W. RUSSELL,

Their Attorney and Proctor. [415]

[Endorsed]: 139. In the United States District Court in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Company, Limited, Libellant, v. The American Schooner "Halcyon," Respondent, J. A. T. Olsen, Master and Claimant. Assignment of Errors. Filed Jan. 29, 1916. F. L. Davis, Clerk. By ———, Deputy Clerk.

Due service of a copy of the within Assignment of Errors this day is admitted.

Dated Jan. 29, 1916.

SMITH, WARREN & SUTTON,

By E. W. SUTTON,

Proctors for Libellant.

[Title of Court and Cause.]

**Stipulation and Order Extending Time to and Including March 16, 1916, to File Apostles on Appeal.**

IT IS HEREBY STIPULATED by and between the parties to the above-entitled cause that the respondent and claimant herein may have to and including March 15th, 1916, within which to file in the United States Circuit Court of Appeals for the Ninth Circuit, their certified apostles on appeal herein.

Dated January 22d, 1916.

(Sgd.) SMITH, WARREN & SUTTON,  
Proctors for Libellant.

(Sgd.) J. W. RUSSELL,  
Proctor for Respondent and Claimant.

The foregoing Stipulation is hereby approved.

(Sgd.) CHAS. F. CLEMONS,  
Judge of the U. S. District Court. [416]

[Endorsed]: No. 139. (Title of Court and Cause.)  
Stipulation Extending Time to File Apostles. Filed  
Jan. 25, 1916, at 2 o'clock and 56 minutes P. M.  
F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow,  
Deputy Clerk. [417]

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[Title of Court and Cause.]

**Certificate of Clerk U. S. District Court to Apostles on Appeal.**

I, George R. Clark, Clerk of the United States District Court for the District and Territory of Hawaii, do hereby certify that the foregoing pages numbered from 1 to 420, inclusive, is a true and com-



[Title of Court and Cause.]

**Order Extending Time to and Including February  
20, 1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein may have to and including the 20th day of February, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named Court.

Dated January 22, 1916.

WM. W. MORROW,  
KELLY,

United States Circuit Judge.

[Endorsed]: Law No. 139. District Court of the United States for the District and Territory of Hawaii, Division ——. Inter-Island Steam Navigation Co., Ltd., a Hawaiian Corporation, etc., Libellant, vs. The Amer. Sch. "Halcyon," etc. J. A. T. Olsen, Master and Claimant. Order Extending Time to File Apostles on Appeal.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to ——— to File Record thereof and to Docket Case. Filed Jan. 22, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including March 1,  
1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 1st day of March, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated February 21, 1916.

WM. W. MORROW,  
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District of Hawaii. In Admiralty. Inter-Island Steam Navigation Company, Limited, a Corporation, Owner of the Steamer "Niihau," for Itself, the Officers, etc., Libellant, vs. Amer. Sch. "Halcyon," etc., Respondent. J. A. T. Olsen, Master and Claimant. Order Extending Time to File Apostles on Appeal. Filed Feb. 21, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including March 15,  
1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 15th day of March, 1916, within which

to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated March 11, 1916.

WM. W. MORROW,  
United States Circuit Judge.

[Endorsed]: Law No. 139. District Court of the United States for the District and Territory of Hawaii, Division ——. Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, etc., Libelant, vs. The Amer. Sch. "Halcyon," etc., Respondent. J. A. T. Olsen, Master and Claimant. Order Extending Time Within Which to Serve and File Apostles on Appeal. Filed Mar. 2, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including March 25,  
1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 25th day of March, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated March 15, 1916.

WM. W. MORROW,  
United States Circuit Judge.



[Endorsed]: No. ——. District Court of the United States, in and for the District and Territory of Hawaii, Division ——. *Inter-Island Steam Navigation Company, Limited*, a Hawaiian Corporation, etc., Libelant, vs. *Am. Str. "Halcyon,"* etc. J. A. T. Olsen, Claimant. Order Extending Time Within Which to File Apostles on Appeal. Filed Mar. 15, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including April 5, 1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 5th day of April, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated March 25, 1916.

WM. W. MORROW,  
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. *Inter-Island Steam Navigation Company, Limited*, a Hawaiian Corporation, Owner of the *Str. "Niihau,"* etc., Libelant, vs. *The Amer. Sch. "Halcyon,"* etc., Respondent. Order Extending Time to File Apostles on Appeal. Filed Mar. 25, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including May 1,  
1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 1st day of May, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated April 5th, 1916.

WM. W. MORROW,  
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Company, Limited, etc., Libellant, vs. Am. Sch. "Halcyon," etc. J. A. T. Olsen, Master and Claimant. Order Extending Time to File Apostles on Appeal. Filed Apr. 5, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including May 6, 1916,  
to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 6th day of May, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apos-

tles on Appeal certified by the clerk of the above-named court.

Dated May 1st, 1916.

WM. W. MORROW,  
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Company, Limited, a Corp., etc., Libellant, vs. Amer. Str. "Haleyon," etc., Respondent. Order Extending Time to File Apostles on Appeal. Filed May 3, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including May 15, 1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 15th day of May, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated May 6, 1916.

WM. W. MORROW,  
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Co., Limited, a Hawaiian Corpo-

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ration, etc., Libelant, vs. The Amer. Sch. "Halcyon,"  
etc., Respondent. J. A. T. Olsen, Claimant. Order  
Extending Time to File Apostles on Appeal. Filed  
May 6, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including May 17,  
1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent,  
claimant and appellants herein, may have to and  
including the 17th day of May, 1916, within which  
to procure to be filed in the United States Circuit  
Court of Appeals, for the Ninth Circuit, the Apos-  
tles on Appeal certified by the clerk of the above-  
named court.

Dated May 15, 1916.

WM. W. MORROW,  
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court  
of the United States in and for the District and  
Territory of Hawaii. Inter-Island Steam Naviga-  
tion Company, Limited, etc., Libelant, vs. The Am.  
Sch. "Halcyon," etc., Respondent. J. A. T. Olsen,  
Master and Claimant. Order Extending Time to  
File Apostles on Appeal. Order Under Rule 16  
Enlarging Time to May 17th, 1916, to File Record  
Thereof and to Docket Case. Filed May 15, 1916.  
F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including June 15, 1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED that the respondent, claimant and appellants herein, may have to and including the 15th day of June, 1916, within which to procure to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the above-named court.

Dated May 17, 1916.

WM. B. GILBERT,  
United States Circuit Judge.

[Endorsed]: Law No. 139. In the District Court of the United States in and for the District and Territory of Hawaii. Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, etc., Libelant, vs. The Amer. Sch. "Halcyon," etc., Respondent. Order Extending Time to File Apostles on Appeal. Filed May 17, 1916. F. D. Monckton, Clerk.

[Title of Court and Cause.]

**Order Extending Time to and Including August 15, 1916, to File Apostles on Appeal.**

IT IS HEREBY ORDERED, That the respondent, claimant and appellants herein, may have to and including the 15th day of August, 1916, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the

Apostles on Appeal certified by the clerk of the above-named court.

Dated June 15, 1916.

WM. H. HUNT,  
United States Circuit Judge.

[Endorsed]: Law No. 139. In the United States District Court in and for the District and Territory of Hawaii. In Admiralty. Inter-Island Steam Navigation Co., a Corporation, etc., Libelant, vs. The Amer. Str. "Halcyon," etc., Respondent, J. A. T. Olsen, Master and Claimant. Order Extending Time to File Apostles on Appeal. Filed Jun. 15, 1916. F. D. Monckton, Clerk.

No. 2830. United States Circuit Court of Appeals for the Ninth Circuit. Eleven Orders Under Rule 16 Enlarging Time to Aug. 15, 1916, to File Record Thereof and to Docket Case. Refiled Jul. 19, 1916. F. D. Monckton, Clerk.

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[Title of Court and Cause.]

**Designation of Parts of Record to be Printed.**

To Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, Owner of the Steamer "Niihau," for Itself, the Officers and Crew of Said Steamer, and Other Servants of Said Owner, and to Messrs. Smith, Warren & Sutton, Its Proctors:

YOU ARE HEREBY NOTIFIED, that the appellant herein intends to rely on each and all of the Assignments of Error in said record contained, and considers all the said record necessary for the con-



sideration thereof, with the exception of the following, which appellant does not consider necessary to be printed in said record, and desires to have omitted from the same:

1. Extended Title of Court and Cause in all cases except on first page and first pleading in the lower court, and the decree, and insert in lieu of caption the words, "Title of Court and Cause."

2. All orders extending time to file Apostles on Appeal filed with the Clerk's office of the Circuit Court of Appeals at San Francisco, California, with the exception of that order dated June 15, 1916, and signed by William H. Hunt, Judge.

3. All orders extending time to file Apostles on Appeal, etc., and filed at Honolulu, Territory of Hawaii, with the exception of that of July 10, 1916, signed by Judge Clemons.

4. Bond for costs on appeal, filed January 4, 1916, and appearing on page 410 of the record from the lower court.

5. Stipulation extending time to file Apostles on Appeal dated January 22, 1916, and filed January 25, 1916.

6. Praecipe for Transcript on Appeal, filed January 29, 1916.

Dated San Francisco, August 1, 1916.

NATHAN H. FRANK,  
IRVING H. FRANK,

Proctors for Appellant.

Copy of the foregoing Designation of Parts of Record to be printed sent by registered mail to

Messrs. Smith, Warren & Sutton, Proctors for Appellee, addressed as follows: Messrs. Smith, Warren & Sutton, Attorneys at Law, Bank of Hawaii Building, Honolulu, T. H.,—on the first day of August, 1916, there being no proctors of record representing the appellee at San Francisco, California.

Dated San Francisco, Cal., August 1, 1916.

NATHAN H. FRANK,  
IRVING H. FRANK,  
By IRVING H. FRANK,  
Proctors for Appellant.

[Endorsed]: No. 2830. In the United States Circuit Court of Appeals in and for the Ninth Circuit. The American Schooner "Halcyon," Her Tackle, Apparel, Machinery, etc., Appellant, vs. Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation, Owner of the Steamer "Niihau," etc., Appellee. Designation of Parts of Record to be Printed. Filed Aug. 2, 1916. F. D. Monckton, Clerk.

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[Title of Court and Cause.]

**Praeipie Re Designation of Parts of Record to be Printed.**

To the Clerk of the said Court:

Sir: Please to disregard Designation of Parts of Records to be Printed, dated Aug. 1, 1916, with the exception of sections numbered 1 and 6 thereof. You will accordingly print that part of the record mentioned in sections 2, 3, 4, 5, of said designation

and omit from the printed record that part mentioned in sections 1 and 6 thereof.

Sept. 5, 1916.

NATHAN H. FRANK,  
IRVING H. FRANK,  
Proctors for Appellants.

[Endorsed]: No. 2830. United States Circuit Court of Appeals for the Ninth Circuit. The American Schooner "Halcyon," etc., vs. Inter-Island Steam Navigation Co., Ltd. Praecipe Re Désignation Parts of Record to be Printed. Filed Sept. 6, 1916. F. D. Monckton, Clerk.

